IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: GARLOCK SEALING TECHNOLOGIES LLC, et al., Debtors.[1]	Case No. 10-BK-31607 Chapter 11 Jointly Administered

DEBTORS' RESPONSE TO POST-TRIAL
BRIEFS OF COMMITTEE AND FCR

[1] The debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company (hereinafter "Garlock" or "Debtors").

Table of Contents

Tables of Authorities

Cases

Statutes

Introduction

The common theme of the Committee and FCR's opening briefs is that Debtors and their experts estimate Garlock's liability in "an imaginary world of [their] own liking rather than the tort system as it exists today."[2] But the evidence at trial reveals that the truth is just the opposite.

The Committee and FCR estimate Garlock's liability in an imaginary world that discards tort law and evidence of causation and damages in favor of a figment that settlements are equivalent to liability. The Committee has steadfastly approached this case as if Garlock were just like Owens Corning and other makers of notoriously dangerous products, who lack viable defenses and agreed to use past settlements for estimation purposes.[3] The imaginary world in which Garlock is just like Owens Corning or any other past debtor simply does not exist.[4] Garlock did not make long-banned asbestos products, Garlock has winning defenses, and Garlock most assuredly does dispute liability and does not agree that its past settlements are a proper basis for estimating its liability, especially given what the record shows drove those settlements.

The evidence at trial proved that Garlock's historical settlements were not a reflection of liability. As Dr. Bates explained, the field of Law and Economics has recognized for decades that

---

[2] Post-Hearing Brief of the Official Committee of Asbestos Personal Injury Claimants for Estimation of Pending and Future Mesothelioma Claims (Docket No. 3198) ("Committee Br.") at 2; *see also* Future Asbestos Claimants' Representative's Post-Trial Brief Regarding the Estimation of Garlock's Mesothelioma Claims (Docket No. 3195) ("FCR Br.") at 23-25. As in Debtors' Post-Trial Brief and Summary of Evidence Presented at Trial (Docket No. 3205) ("Debtors' Opening Brief"), references to the transcript of the estimation trial are designated as "Tr." herein.

[3] *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 721-22 (D. Del. 2005).

[4] Nor is Garlock like Bondex, a company whose product was banned in 1977 and whose own witness at estimation testified on direct to asbestos exposures from joint compound that were more than a hundred times higher than the exposure levels that Debtors' experts testified occur from Garlock products. Debtors' expert testimony in this case was that, using pro-claimant assumptions, Garlock exposures are 0.02 fibers per cc on a time weighted basis for workers with the highest contact with gaskets. Tr. 853:16-19 (Henshaw). A Bondex expert witness testified on direct that joint compound use resulted in exposures of 2.1 and 4.5 fibers per cc on a time weighted basis and "for a short period of time, the fibers per cc might be 20 or 30 fibers." Transcript of Estimation Trial at 85:3-86:11, *In re Specialty Products Holding Corp.*, No. 10-11780 (Bankr. D. Del. Jan. 9, 2013) (Docket No. 3471) (testimony of Kim Anderson).

settlements are driven by both trial risk and costs. Dr. Bates proved that the vast majority of Garlock's settlements were (as Mr. Magee and other witnesses testified) driven primarily by the cost of defense, not potential liability.

In contrast, neither the Committee nor the FCR offered any evidence that Garlock's settlements did in fact reflect liability. Instead, they rely blindly on a self-anointed "standard methodology" employed in Owens Corning and other cases in which debtors agreed to use past settlements for estimation. To the extent they even address the relationship between settlements and liability, they argue that, because Garlock admits that it *considered* trial risk or merits-based factors, among others, before settling cases, its settlements must be treated as admissions of the validity and value of settled claims. But none of their experts analyzed the role costs played in driving settlements, even though Dr. Peterson previously testified that litigation costs are "why 99.9 percent of the cases settle, rather than going to trial, because both sides know that these are expensive propositions."[5] This is a fatal flaw in their attempt to equate settlements with Garlock's liability.

Drs. Rabinovitz and Peterson generated their estimates by taking the highest settlements in Garlock's history and projecting them forward along the mesothelioma incidence curve. They did not adjust their estimates to reflect $30 billion in compensation that asbestos claimants will receive from newly formed Trusts—even though both recognized in previous engagements that the Bankruptcy Wave increased the settlements of tort system defendants such as Garlock, and Dr. Rabinovitz recognized that the influx of Trust money should place "considerable downward pressure on indemnity values."[6]

[5] Tr. 3982:8-3983:23 (Peterson).
[6] Tr. 4017:7-12 (Peterson); *see also* Tr. 4016:10-4018:16, 4019:15-4020:2, 4025:9-4026:12, 4031:5-4031:19 (Peterson); Tr. 4305:8-4309:20, 4312:17-4314:3 (Rabinovitz).

Equally disturbing, they did not account in any way for the fact that Garlock's largest settlements were based on incomplete evidentiary records. The Debtors proved from evidence uncovered in fifteen "Designated Plaintiff" cases that seven plaintiffs' firms that routinely obtained high settlement values from Garlock engaged in a practice of suppressing evidence of Trust exposures that drove up Garlock's defense costs and trial risk. The FCR admits that "Garlock's allegations in this regard are serious, and should be taken seriously."[7] But both the Committee and FCR opine that the Debtors did not offer evidence that these practices occurred in a sufficient number of cases to have an impact on Garlock's settlements.

In proceeding on the assumption that Garlock's settlements were not affected by evidence suppression, however, Drs. Rabinovitz and Peterson failed to consider that:

- Debtors also offered unrebutted testimony that these seven plaintiffs' firms systematically used these practices in selected cases to drive up Garlock's settlement offers to large numbers of their clients and that settlements with those firms had a material effect on Garlock's average settlement values.
- Leading plaintiffs' lawyers, recognizing the impact that evidence of exposures supporting Trust claims has on the value of their clients' claims against tort system defendants, designed Trust distribution procedures with confidentiality, claim deferral, and withdrawal and "sole benefit" provisions to frustrate the ability of defendants to obtain evidence regarding Trust claims.
- Numerous other firms for whom Garlock has not obtained discovery routinely targeted Garlock in cases in which claimants provided similarly suspicious

[7] FCR Br. at 33.

testimony that they lacked evidence of exposures to ubiquitous, dangerous products of bankrupt companies.

- Garlock offered evidence that, in a sample of settled mesothelioma cases with 205 claimants (the RFA-1 Cases), Garlock compared data it received regarding Trust claims filed by RFA-1 Claimants against 10 major Trusts managed by the Delaware Claims Processing Facility and discovered that such claimants failed to disclose on average their exposures to the products of 8.9 companies. An average of 4.4 of these omissions involved exposures to insulation products.
- Garlock was afforded discovery of evidence suppression in only fifteen resolved cases (all of which revealed material evidence concealment) and that the Committee and FCR successfully objected to the Debtors' request long before the estimation trial to take discovery from numerous other law firms for 500 representative resolved cases.

As a result, both Drs. Rabinovitz and Peterson uncritically used what Mr. Magee termed the "steroids era" settlements to assign $900 million or more in liability to Garlock, which was (according to the testimony of Dr. Peterson) "a rather minor producer of asbestos products."[8]

Drs. Rabinovitz and Peterson even ignored that 750 claimants recorded as having pending mesothelioma claims in the Garrison database stated unequivocally in questionnaire answers that they do not, in fact, have pending mesothelioma claims against Garlock.[9] Thus, even if their methodology of equating settlements with liability had merit, they included 750 claims in their estimates that simply do not exist. As a result of these and other data processing

[8] Tr. 1413:7-14 (Magee); Tr. 4036:1-4039:20 (Peterson); Transcript of Proceedings, Nov. 13, 2003, *In re Western Asbestos Co.*, No. 02-46284 (GST-7202) at 719.
[9] Tr. 4118:7-4119:2 (Peterson); Tr. 4351:2-4351:5 (Rabinovitz); Tr. 4681:2-4683:6, 4688:1-4690:13 (Gallardo-Garcia).

errors alone, Dr. Peterson's estimate was $190 million too high and Dr. Rabinovitz's was $80 million too high.[10] Eliminating all errors in how they applied their own methodologies reduces their forecasts to approximately $300 million.[11] It is not Debtors' experts who are living in an "imaginary world."

In the tort system, Garlock's settlements are not admissible to prove liability or damages. Garlock has liability only to plaintiffs who can prove Garlock's products substantially contributed to their mesothelioma. Garlock's liability, if any, is limited to portions of plaintiffs' damages that tort law permits plaintiffs to collect after taking into account the fault of and payments from other defendants. Tort system liability and damages also require admissible scientific and exposure evidence before courts and, if appropriate, juries can consider plaintiffs' relative exposures to Garlock's products in the context of their exposures to products of other companies. These are fundamental principles of traditional tort law that exist today and have existed for centuries.

Discovery prior to the estimation trial proved, not surprisingly, that the typical mesothelioma claimant against Garlock experienced exposure to the products of dozens of other companies, including insulation companies that have reorganized and established Trusts under Code Section 524(g). This discovery is consistent with opinions offered by Drs. Peterson and Rabinovitz in dozens of previous asbestos bankruptcy cases that most future claimants would be entitled to compensation from most of these Trusts, as well as Dr. Peterson's opinion that Garlock is "not a significant defendant" and was "a rather minor producer of asbestos

[10] Tr. 4779:4-8 (Bates); Bates Rebuttal Demonstrative Slides at 5 (GST-8026).
[11] Tr. 4801:7-4802:9 (Bates); Bates Rebuttal Demonstrative Slides at 5 (GST-8026).

products."[12] Ignoring this reality, Drs. Peterson and Rabinovitz now implausibly claim that only one other company would be liable in the average case asserted against Garlock.[13]

At the end of the day, only Debtors have offered expert opinions estimating liability based on tort law and relevant evidence. Only Debtors' experts:

- Took account of all information available in this case;
- Provided the Court with reasonable estimates of the facts relevant to liability under applicable tort law, including exposures, damages, and likelihood of success;
- Reconciled Debtors' settlements and legal liability;
- Projected the cost of resolving current and future mesothelioma claims under a variety of scenarios, including in the tort system and under Debtors' Plan; and
- Followed the scientific method of hypothesis formation and testing, as Fourth Circuit precedent requires.

Debtors took full account of the reality of mesothelioma claims against Garlock, and thus provided the Court with an estimate that will supply a firm foundation for further proceedings in this case, including formulation and confirmation of a plan of reorganization.

As Mr. Magee testified at trial, Debtors filed for Chapter 11 protection to obtain "a resolution that would end the litigation for Garlock and that would be fair," through a plan of reorganization that will "provide expeditious and fair payments for mesothelioma claimants."[14] The Committee and FCR's estimates—with their use of settlements inflated by defense costs and incomplete evidentiary records, their disregard of discovery showing that hundreds of claims

[12] Tr. 4036:1-4039:20 (Peterson); Transcript of Proceedings, Nov. 13, 2003, *In re Western Asbestos Co.*, No. 02-46284 (GST-7202) at 719.
[13] Tr. 3921:14-3923:14, 3974:21-3975:12 (Peterson); Tr. 4221:11-15 (Rabinovitz).
[14] Tr. 1414:25-1415:1, 3092:24-3093:1 (Magee).

have already been dismissed or were not mesothelioma claims, and many other flaws—do not provide a basis for a fair reorganization.

Debtors' Opening Brief thoroughly addressed both Debtors' case and the criticisms the Committee and FCR witnesses made of Debtors' case. This brief therefore addresses discrete issues raised by the Committee and FCR opening briefs that were not addressed in the Opening Brief. In addition, Appendix I to this brief addresses, point by point, the Committee's proposed findings of fact and conclusions of law, and Appendix II to this brief addresses certain issues raised by the Committee's discussion of the Designated Plaintiff cases.

The Court should reject the estimates of Drs. Rabinovitz and Peterson, and provide a fair result under the law.

I. The estimates offered by Drs. Rabinovitz and Peterson are not credible

The Court in its Order for Estimation of Mesothelioma Claims (the "Estimation Order") (Docket No. 2102) held that it would "estimate Garlock's mesothelioma asbestos liability for allowance purposes pursuant to section 502(c)," Estimation Order ¶ 9, would hear evidence concerning Debtors' merits-based approach and the Committee and FCR's settlements-based approach, and "will make its decision based upon which is the more persuasive." *Id.* ¶ 19.

Rather than attempt to prove that their settlements-based approach is a credible method for estimating allowed claims, the Committee and FCR rely principally on the same legal arguments that the Court rejected in its Estimation Order. *See id.* ¶ 19 ("the two approaches to estimation are not matters of law, but rather matters of evidence"). They also rely on the same arguments they have urged throughout this case equating Garlock's past settlements with the merits of those claims—arguments that are not persuasive given the credible and largely

unrebutted evidence offered about Garlock's settlements by Dr. Bates and Messrs. Magee, Turlik, Glaspy, and Brickman at trial.

A. The settlement-based approach is not the "standard method"

The Committee and FCR's leading argument, once again, is that their settlement-based approach is the "standard method," one that has been used "in every previous asbestos bankruptcy estimation ever decided by a court."[15]

The Court already rejected this argument in its Estimation Order when it recognized that in the cases upon which the Committee and FCR ground their entire approach to this case, the debtor had settled with asbestos claimants and did not dispute its liability. *See* Estimation Order ¶ 6 (recognizing that estimations in *Owens Corning*, *Armstrong*, and *Federal-Mogul* cases were "for purposes other than allowance," and "[i]n each of these cases the debtor and personal injury claimants had reached an agreement on the asbestos liability and the dispute was with another creditor"); *id.* ¶ 15 (noting same, and also citing *Eagle Picher* case).

The Court's Estimation Order also recognized that debtors have offered merits-based approaches. *See* Estimation Order ¶ 17 (citing *USG*, *W.R. Grace*, and *G-I Holdings* cases). In each case, however, the asbestos claimants settled before the court made a decision. There is no settlement in this case.[16]

Outside the context of asbestos bankruptcy cases where the debtor does not object, bankruptcy courts never use settlements to estimate the allowed amount of disputed claims. Courts recognize that "[i]n determining the claims' value, the Court is bound by the legal rules which may govern the ultimate value of the claim." *In re Farley, Inc.*, 146 B.R. 748, 753 (Bankr. N.D. Ill. 1992) (citing *Bittner v. Borne Chemical Co., Inc.*, 691 F.2d 134, 135 (3d Cir. 1982)).

[15] Committee Br. at 1; *see also* FCR Br. at 14.
[16] Though not for lack of Debtors' trying.

Thus, just as Debtors' expert Dr. Bates did here, those courts estimate the claimant's potential damages, the debtor's share of those damages, and the claimant's likelihood of successfully proving the claim. *See, e.g.*, *In re Ralph Lauren Womenswear*, 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996) ("The estimated value of a claim is . . . the amount of the claim diminished by [the] probability that it may be sustainable only in part or not at all"); *In re Adelphia Communications Corp.*, 368 B.R. 140, 279 (Bankr. S.D.N.Y. 2007) (same); *In re Farley*, 146 B.R. at 750-52; *In re Continental Airlines Corp.*, 64 B.R. 858, 860-61 (Bankr. S.D. Tex. 1986) (estimating personal injury claims at zero because court determined claimants had no likelihood of success); *In re Windsor Plumbing Supply Co., Inc.*, 170 B.R. 503, 524, 528, 531, 536 (Bankr. E.D.N.Y. 1994); *In re Aspen Limousine Services, Inc.*, 193 B.R. 325, 337-39 (D. Colo. 1996).[17]

The Committee and FCR's appeal to four cases from outside this jurisdiction where debtors had settled, did not dispute liability, did not object to settlements, and, moreover, had manufactured highly dangerous friable asbestos products should carry no weight with this Court.

B. The Committee and FCR failed to prove that the settlements used by Drs. Rabinovitz and Peterson are an appropriate proxy for the merits of claims[18]

The Committee and FCR therefore had the burden of persuading the Court that Garlock's settlements are an appropriate proxy for allowed claims. *See* Estimation Order ¶ 19. To meet that

[17] The Committee and FCR argue that the law is somehow different in the context of personal injury claims because of the jurisdictional limitations on the bankruptcy court (*see* Committee Br. at 19-20; FCR Br. at 8), but they are incorrect. Many of the cases cited in this paragraph involved personal injury claims, and the Fourth Circuit has held that the bankruptcy court can estimate personal injury claims for the purpose of formulating a plan of reorganization without running afoul of the jurisdictional limitations in section 157. *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1013-14 (4th Cir. 1986).

[18] The Court ruled, over Debtors' objection, that the Committee and FCR could use historical settlement data to support their experts' approaches to estimation. Estimation Order ¶ 20. The ruling was premised on the rationale that "[t]he claimants do not propose to use Garlock's settlement data to 'prove or disprove the validity or amount of a disputed claim.'" *Id.* ¶ 22 (citing *Wyatt v. Sec. Inn Food & Beverage, Inc.*, 819 F.2d 69, 71 (4th Cir. 1987)). The Court pointed out that "Rule 408 does not prohibit the use of a prior settlement when the party 'does not seek to show the validity or invalidity of the compromised claim.'" Estimation Order ¶ 23. In their presentations at trial and subsequent post-trial briefs, however, the Committee and FCR made clear that using Garlock's past settlements as evidence of its evaluation of the validity and value of compromised claims is a core premise of their "standard methodology." *See, e.g.*, Committee Br. at 13-16; FCR Br. at 17-18. The Court recognized Debtors' standing objection to the Committee and FCR's use of settlements and settlement-related evidence.

burden, they espouse a vision of settlements as somehow representing the price that Garlock and claimants put on the merits of cases.[19] The FCR, for example, alleges that Garlock's settlements "were merits-based" and that the settlements represent "the merits-based price determined by Garlock."[20] But the basic premise of their argument—the assertion that Garlock's "principal concern" in settling cases was the risk of an adverse verdict at trial—is not supported by the record.

1. Garlock considered trial risk, but in relatively few cases was it a factor that impacted settlement

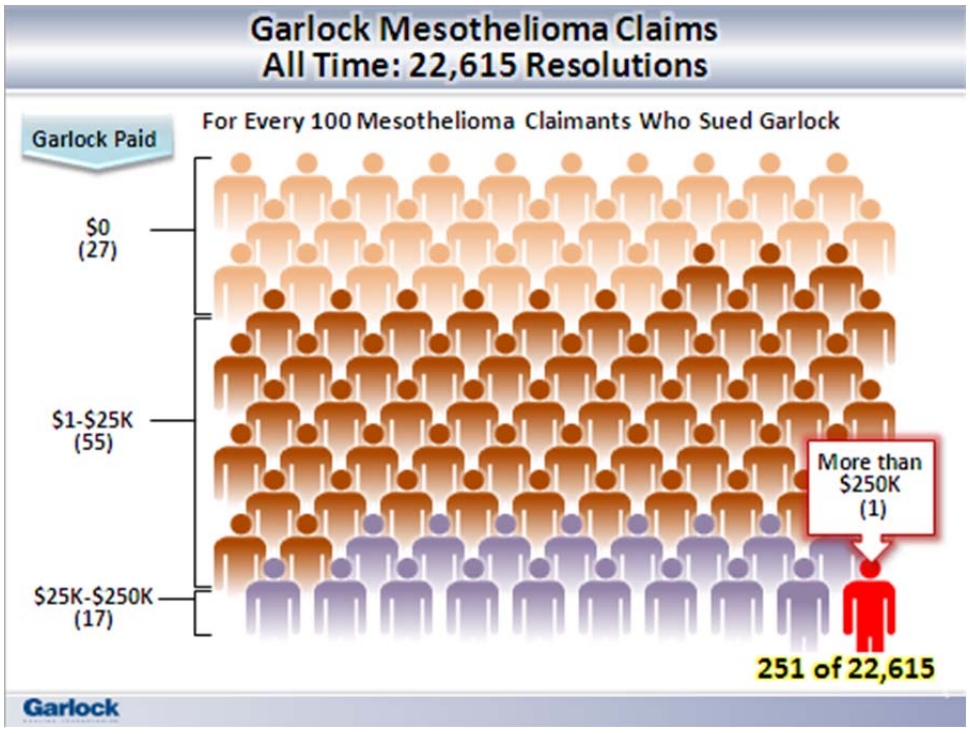
Garlock's witnesses freely acknowledged that Garlock *considered* trial risk in reaching settlements, but testified that the cost of defense was a much larger factor driving settlements. Mr. Magee testified that in the 1990s, when plaintiffs freely admitted their exposures to insulation products, "I think everyone would acknowledge [the trial risk] side of the equation was always zero."[21] "It was really the other side of the equation that was driving what [Garlock was] doing," Mr. Magee continued, "which was defendant's avoidable costs."[22]

After the Bankruptcy Wave, trial risk factored into settlements in the so-called "driver" cases; the narrow set of cases that certain plaintiffs' firms used to drive up settlements by presenting a credible risk of taking Garlock to trial. Those were the cases where a plaintiffs' firm would "focus on, target Garlock on, threaten to take it to trial to get a verdict to try to drive higher settlements . . . . It was trying to drive the settlement amounts up."[23] In those cases, plaintiffs firms created the "perception of liability" by pushing cases toward trial without

[19] Committee Br. at 13; *see id.* 13-16; FCR Br. at 17-18 (arguing that settlements should be used because Garlock considered the merits of cases).
[20] FCR Br. at 27, 29; *see also* FCR Br. at 17.
[21] Tr. 1391:14-15 (Magee).
[22] Tr. 1391:21-23 (Magee).
[23] Tr. 1410:18-23 (Magee); Tr. 2257:4-2258:7 (Turlik); Tr. 4533:8-14 (Glaspy).

acknowledging plaintiffs' exposure to other companies' products.[24] By doing so, plaintiffs' firms increased trial risk and further increased Garlock's costs.

Even in this era, however, defense costs and not trial risk remained the primary driver of Garlock's settlements. Mr. Magee testified that "at all times – at all times, because of the number of claims, our focus had been on avoidable costs. That's what's driven our settlement strategy throughout, is avoiding costs to resolve claims."[25] "[D]uring all these periods a large percentage of these claims are being resolved in order to avoid the costs . . . that come about when you do have to try one of these cases. So a large majority of these cases were resolved to avoid costs."[26] Mr. Magee detailed how in Garlock's history, Garlock resolved more than 80% of its mesothelioma cases for amounts of $25,000 or less.[27]



[24] Tr. 1410:25-1411:2 (Magee).
[25] Tr. 1394:2-5 (Magee).
[26] Tr. 2595:9-13 (Magee).
[27] Tr. 1409:3-6 (Magee); Magee Demonstrative Slides at 2 (GST-8018).

No party seriously contends that such settlements reflect amounts where Garlock's "principal concern" was an adverse verdict. Dr. Bates corroborated Mr. Magee's testimony by showing that in the vast majority of cases, the settlement amount did not vary with the age of the plaintiff, showing that the cost of defense, and not the risk of trial (which would vary with the age of the plaintiff) drove settlements in those cases.[28] Even the FCR admits that "common sense dictates" that, when Garlock settled claims before trial it saved trial costs and took those savings into account in its settlement decisions.[29]

The Committee and FCR can sustain their unsupported view of Garlock's settlements as driven by trial risk only by omitting to disclose the witness testimony that belies its point—even where it immediately follows quotations upon which the Committee relies. For instance, the Committee relies on this quotation from the cross-examination of Mr. Glaspy to try to suggest that trial risk was the principal motivating factor for the settlement of every case:

> [Mr. Guy:] . . . Did you consider trial risks when you settled those cases?
> [Mr. Glaspy:] Always.[30]

But the Committee fails to disclose Mr. Glaspy's testimony on the very next page of the transcript that undermines this assertion:

> [Mr. Guy:] Would you agree with me, sir, that when you were settling cases, you were evaluating the strengths and weaknesses of individual cases?
> [Mr. Glaspy:] **I was, as well as the cost to defend those cases**.[31]

---

[28] Tr. 2765:15-2770:10 (Bates) (explaining age decrease test applied to settlement data); Bates Demonstrative Slides at 33-36 (GST-8005). The Committee attempts to attack Dr. Bates' age decrease test on page 29 of its brief. Debtors explain why the Committee's critique has no merit at pages 66-67 of their Opening Brief.
[29] FCR Br. at 30.
[30] Committee Br. at 16 (quoting Tr. 4662:19-25). Debtors acknowledged at trial that trial risk was part of their settlement analysis and indeed offered Judge Posner's Law and Economics formula of the determinants of settlement, which includes trial risk. *See* Bates Demonstrative Slides at 22 (GST-8005). Debtors' witnesses explained, however, that for most settlements they assigned little or no value to trial risk. Tr. 1390:1-1391:7, 1391:11-1392:4 (Magee); Tr. 2249:19-20 (Turlik); Tr. 4664:14-16 (Glaspy).
[31] Tr. 4663:25-4664:3 (Glaspy) (emphasis added).

Further on that same page, the testimony makes clear that costs, rather than trial risk, was the "major factor" in cases:

> [Mr. Guy:] Now, obviously, defense costs were a factor as well, correct?
> [Mr. Glaspy:] **In a lot of cases, the major factor**.[32]

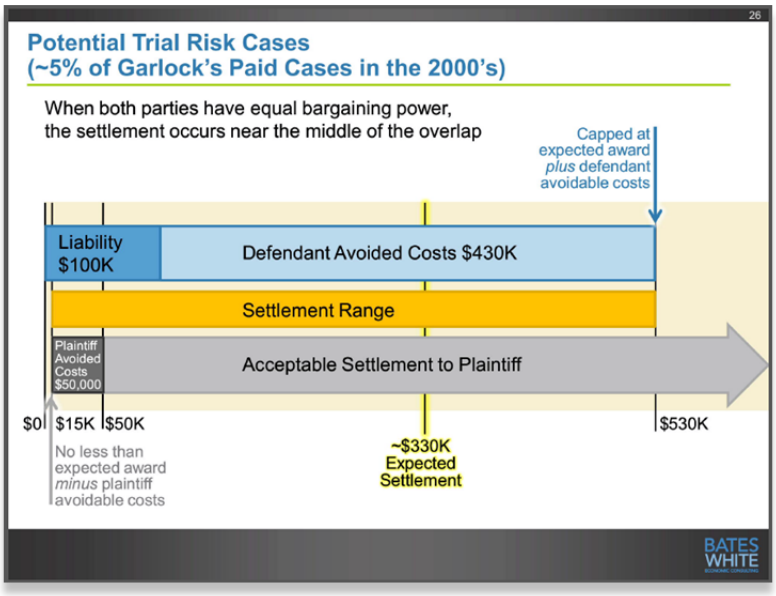
The Committee relies on isolated, out-of-context statements from Debtors' witnesses because they advanced no proof of their own to demonstrate that Garlock's settlements were a proxy for the merits of claims. To the contrary, the Committee and FCR's witnesses supported the opposite point.[33] Dr. Peterson testified that almost all cases settle not to resolve trial risk, but to avoid litigation costs: "That's why 99.9 percent of the cases settle, rather than going to trial, because both sides know that these are expensive propositions."[34] Dr. Peterson further testified, consistent with Mr. Magee's testimony about "driver cases," that in group settlements, trial risk "isn't much of a consideration because they haven't gotten that far yet; they can't assess the risk."[35] And Dr. Rabinovitz testified that asbestos litigation is "an industry" where cases are not negotiated individually, also supporting Mr. Magee's "driver case" testimony.[36] She also recognized the importance of defense costs, testifying that if Garlock were to try all the cases against it, Garlock would spend "billions of dollars just on this [sic] costs of trying those cases."[37]

Finally, the Committee and FCR ignore that even in the "driver cases" where trial risk affected settlements, defense costs still played a large role. Law and Economics has long recognized that settlements are a product not only of trial risk, but also of the costs avoided by

---

[32] Tr. 4664:14-16 (Glaspy) (emphasis added); *see also* 12/12/12 Grant Dep. at 220:9-11; Drake Dep. at 57:10-11; Henzel Dep. at 32:3-6; 1/21/13 Hennessy Dep. at 30:18-19; O'Reilly Dep. at 166:4-6.
[33] Plaintiffs' attorneys readily acknowledged the impact of defense costs on Garlock's settlement decisions. *See* Belluck Dep. at 120:8-121:5; Kendall Dep. at 111:3-20; Shepard Dep. at 68:14-17.
[34] Tr. 3982:11-13 (Peterson); *see also* Tr. 3981:18-3983:23 (Peterson).
[35] Tr. 3984:9-12 (Peterson); *see also* Tr. 3983:24-3984:14 (Peterson).
[36] Tr. 4367:11-4369:8 (Rabinovitz); *see also* Tr. 4193:14-4194:14 (Rabinovitz).
[37] Tr. 4217:12-17 (Rabinovitz).

settling.[38] Dr. Bates demonstrated how, even in cases where there is some perceived risk of an adverse judgment, when costs are high, avoided costs influence the amount of settlement substantially more than the risk of an adverse judgment.



Dr. Bates then showed, using his age decrease test, that even in the five percent of Garlock settlements affected by trial risk, defense costs were the main driver of the settlement, such that the settlement exceeded Garlock's trial risk substantially.[39] The Committee and FCR, by contrast, called no witness who could offer an explanation or framework to explain how trial risk related to settlement amounts. Their position is that, because Debtors' witnesses admit that Garlock considered trial risk as a factor in settling cases, its settlements must be accepted as a perfect, dollar-for-dollar measure of the merit of settled mesothelioma claims. Neither Dr. Rabinovitz nor Dr. Peterson tried to explain this relationship at all—and thus did not provide a recognized methodology, such as Law and Economics, to explain it either. The Committee and FCR are thus relegated to relying on out-of-context quotations from Debtors' lawyers about how

[38] Tr. 2736:23-2737:20, 4755:20-4756:18 (Bates).
[39] Tr. 2765:15-2770:10 (Bates) (explaining age decrease test applied to settlement data); Bates Demonstrative Slides at 33-36 (GST-8005).

trial risk was considered, which falls far short of proving that Garlock's settlements priced the merits of claims against it.

2. The MEAs upon which the Committee and FCR heavily rely are neither representative of the majority of cases nor probative of Garlock's liability under the law

The Committee and FCR also cite discussions in Garlock's internal, privileged MEAs to support their contention that Garlock's "principal concern" was adverse verdicts.[40] But they fail to recognize that MEAs produced in this litigation were prepared for "driver"-type cases in which Debtors admitted that trial risk played a role in settlement decisions. As Debtors explained at trial, these are not the cases that covered the settlement waterfront and do not apply to the vast majority of Garlock's settlements.[41] Debtors were required to produce MEAs in discovery only for cases where Debtors contended that settlements were inflated by the non-disclosure of material exposure evidence, and thus by definition the MEAs related to cases where trial risk was a factor. They do not support Committee and FCR's theory that Garlock's purpose in settling every case was to resolve perceived, significant trial risk.

Further diminishing their probative value, the MEAs, in function, were after-the-fact documents prepared for accounting documentation purposes that were never intended to provide full explanations of the reasons Garlock agreed to settle cases.[42] Many of the MEAs that Garlock produced, for instance, contained virtually no reason for entering settlements,[43] and many others

[40] The Committee and FCR offered MEAs in their improper attempt to prove that Garlock's mesothelioma settlements evidence Garlock's view of the validity and value of settled claims. Although there is no dispute that MEAs are attorney work product, the Court compelled Garlock to produce them over its objection. At trial, the Court recognized Garlock's standing objection to the admission and use of the MEAs.

[41] MEAs produced in this case (over Debtors' objections) related to cases where Garlock identified discrepancies between the discovery responses plaintiffs provided to Garlock in tort-system litigation and their submissions to asbestos Trusts and reorganized debtors obtained in these proceedings.

[42] Tr. 3059:9-15 (Magee) (explaining that MEAs were prepared after a settlement decision had been made and discussed internally); Tr. 3059:22-3060:4 (Magee) (MEAs served to document approval for accounting function, not deliberations of settlement decision); *see also* Tr. 3057:14-3060:4 (Magee) (describing MEAs generally).

[43] For example, the MEA for the Ridenour case settlement group gives no reasons for settlement at all, but simply outlines the financial features of the settlement and documents that the settlement was authorized. *See* ACC-0754 at

included discussions about cost avoidance and other issues that would have been relevant to every settlement.[44] The MEAs do not provide a comprehensive listing of the factors Garlock considered when resolving cases.

The Committee's brief misleadingly emphasizes content from one MEA that indicates that verdicts for a large group of cases, against all defendants, could total a billion dollars.[45] The Committee ignores that Garlock's share of any verdict, if Garlock even suffered a verdict, would be small. When asked about an MEA for settlements with the same firm (the Kazan McClain firm) that contained the same language about a worst-case billion dollar collective verdict, Mr. Magee explained that language likely was "puffing."[46] The fact is that Garlock, in settlements with that firm, paid "less than any other defendant in Oakland" and had an understanding with the Kazan McClain firm that "Garlock had less responsibility or was less of a legitimate target than all the other – all the other defendants that [plaintiffs' counsel] were suing in those cases."[47] For that reason, settlements were for amounts that were "far less than the amount that would have been required for Garlock to defend and win the case."[48]

Most importantly, however, these MEAs relate to cases where Debtors showed, through unrebutted evidence at trial, that material exposure evidence had not been disclosed. Mr. Magee testified that in each one of these cases, the plaintiff filed Trust claims or ballots based on exposures that were never disclosed in tort system discovery.[49] The Committee and FCR never

---

GST-EST-0556282. Another example is the MEA for the Palmer and Rose cases, which identifies only financial terms. *See* ACC-0754 at GST-EST-0556286.

[44] For example, the MEA for the Curry settlement says settlement "reduces costs and inherent risk of litigation," ACC-0754 at GST-EST-0556296, and the MEA for the Ramsey settlement cites "peace" achieved with the deal that means "many defense dollars were saved." *See* ACC-0754 at GST-EST-0556298.

[45] Committee Br. at 14-15 (quoting ACC-0754).

[46] Tr. 3233:2 (Magee).

[47] Tr. 3232:15-22 (Magee).

[48] Tr. 3233:3-5 (Magee).

[49] Tr. 3063:15-3065:2 (Magee); Tr. 3066:3-3067:3 (Magee); Omissions in RFA-1 Cases Based on DCPF and Ballot Data Only (GST-8001).

rebutted this testimony or presented any evidence to the contrary.[50] Thus, statements in MEAs about trial risk reflect only the "illusion" of liability that emerged after the Bankruptcy Wave.[51]

For instance, Garlock compared discovery it obtained from the Kazan McClain firm in the tort system in the *Jensen* case, covered by the MEA the Committee cites, to information from the Delaware Claims Processing Facility ("DCPF") Trusts as well as ballot submissions in Chapter 11 cases. That comparison showed that the Kazan McClain firm in *Jensen* omitted to disclose exposures to products of *at least* eight other companies, including five companies that manufactured asbestos insulation.[52] It was this pattern of non-disclosure revealed by DCPF submissions that led Garlock to seek discovery in the fifteen "Designated Plaintiff" cases. That discovery showed omissions of evidence of exposure to the products of, on average, 18.9 bankrupt companies.[53]

The Committee also identified an MEA for a settlement with the Belluck & Fox firm, quoting language from the MEA that the settlement was "favorable to Garlock, particularly when weighed against the dangers of trying cases in New York City."[54] That MEA covered the *Smalley* and *Zajack* cases where discovery from DCPF Trusts similarly showed Belluck & Fox failed to disclose *at least* seven Trust product exposures in each case, many of which were exposures to products from companies that manufactured asbestos insulation (five such omissions in *Smalley* and four in *Zajack*) .[55] Full discovery of those cases would likely yield substantial additional omissions, like the discovery of every Designated Plaintiff case did.

---

[50] In fact, the FCR acknowledges that Garlock demonstrated at trial that some plaintiff firms follow a practice of first pursuing cases against solvent defendants, settling, and then submitting claims to bankruptcy Trusts, rather than pursuing cases against solvent and insolvent defendants simultaneously. FCR Post-Trial Brief at 32.
[51] Tr. 2573:15 (Magee).
[52] *See* Omissions in RFA-1 Cases Based on DCPF and Ballot Data Only at 3 (GST-8001).
[53] Tr. 2596:24-2597:3 (Magee); Magee Demonstrative Slides at 34 (GST-8017).
[54] Committee Br. at 15 (quoting ACC-754 at GST-EST-0556290).
[55] Smalley filed Trust claims against seven DCPF Trusts and ballots in four reorganization cases (two were companies he filed Trust claims against) based on undisclosed exposures. Zajack filed Trust claims against seven

Not surprisingly, the very language the Committee quotes in its brief, "the dangers of trying cases in New York City," also appeared in the MEA for Belluck & Fox's *Homa* and *Beltrami* cases that were discussed by witnesses in detail at trial.[56] In *Homa*, Committee member Belluck & Fox created the "perception of liability" when, notwithstanding the requirements of the New York City Asbestos Case Management Order ("New York City CMO") and Garlock's specific requests, it denied that Mr. Homa filed Trust claims or intended to.[57] Discovery showed that Mr. Homa filed at least one claim before trial, and another eight (or more) within 24 hours of settling with Garlock at trial. He went on to file a total of twenty-two Trust claims that were never disclosed to Garlock.[58] The David Firm, which referred the *Homa* case to Belluck & Fox, was prepared to file these Trust claims at the time the case was filed and well before pre-trial discovery.[59] But Belluck & Fox instructed the David Firm to delay filing the claims until after Mr. Homa resolved his case with Garlock.[60]

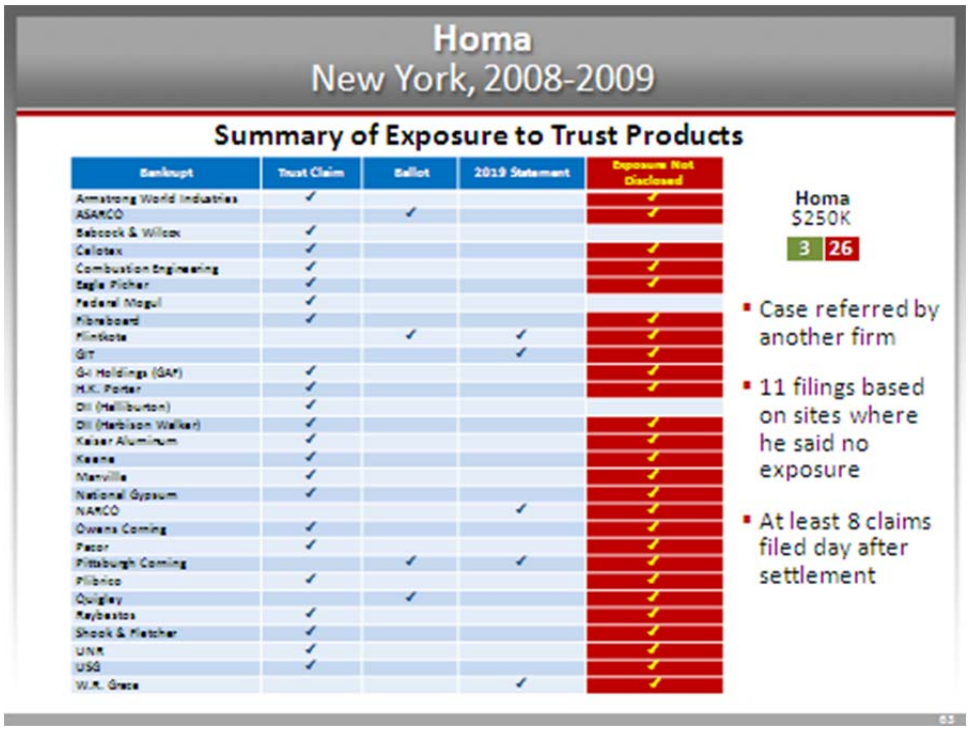
Those claims revealed exposure to insulation products, such as those from, for example, Armstrong, Eagle Picher, and Pacor, that Belluck & Fox denied to Garlock. They also included assertions of exposures at worksite locations where Mr. Homa told Garlock he was not exposed to any asbestos whatsoever.[61]

Belluck & Fox plaintiff Beltrami similarly filed eighteen Trust claims even while Belluck & Fox denied he was exposed to any bankrupt companies' products in written discovery.[62] At

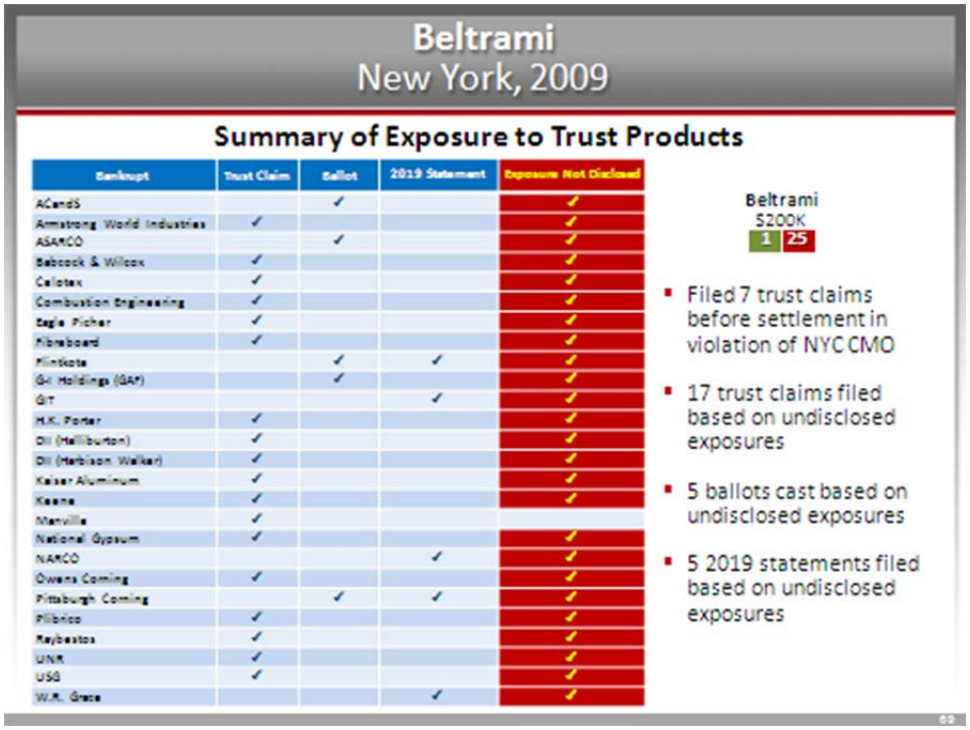
---

DCPF Trusts based on undisclosed exposures. *See* Omissions in RFA-1 Cases Based on DCPF and Ballot Data Only at 6-7 (GST-8001).
[56] *See* ACC-0329 at GST-EST-0556262.
[57] Belluck Dep. at 151:19-24; Tr. 2307:9-2308:4, 2308:14-16 (Turlik).
[58] *See* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 16 (GST-8011).
[59] Cooper Dep. at 72:11-18, 73:15-22.
[60] Cooper Dep. at 75:1-17.
[61] Tr. 2313:6-8 (Turlik).
[62] Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 44-45 (GST-8011); Turlik Demonstrative Slides at 50 (GST-8000).

least seven of Mr. Beltrami's claims were filed before Mr. Beltrami settled with Garlock.[63] The following demonstrative trial exhibits summarize the information revealed in the *Beltrami* and *Homa* cases:[64]



[63] Tr. 2317:22-23 (Turlik).
[64] Turlik Demonstrative Slides at 44, 50 (GST-8000).



In these instances, Garlock perceived the "dangers" the Committee cites because Belluck & Fox defied its discovery obligations and violated the plain terms of a court order. Had Belluck & Fox followed the law and made required disclosures, those disclosures would have vastly altered Garlock's assessment of risk:

> Instead of having our efforts to show exposure to thermal insulation products being shot down, as it were, we would have had this evidence and it would have made a much stronger case. **It would have reduced our risk because we would have been able to show those exposures**.[65]

In sum, to the extent that MEAs the Committee cites describe trial risk, the evidence presented at trial proved that that risk was due to the illusion of risk plaintiffs' counsel manufactured through non-disclosure, typified in cases such as *Homa*, *Beltrami*, *Smalley*, *Zajack*, and *Jensen*.

3. EnPro's securities filings do not support the Committee and FCR's equation of settlements with liability

[65] Tr. 2315:1-6 (Turlik) (emphasis added).

The FCR also relies on EnPro's securities filings for the proposition that Garlock's settlements were "merits based." The FCR cites language describing how Garlock's settlements varied based on claims' characteristics.[66] The FCR does not suggest that settlements were based solely on merit considerations, but acknowledges that the evidence established that Garlock's lawyers also considered the potential for defense costs savings when they made settlement decisions.[67] The FCR argues that SEC filings do not state that defense costs were the "controlling factor" in the settlement process.[68] The FCR's apparent logic is that, unless settlement decisions are made solely based on defense costs concerns, the full amount of the settlements should be construed as reflecting merits-based values of compromised claims.

The FCR's reasoning is flawed and not supported by any evidence offered at trial. Certainly as a conceptual matter there is a middle position, namely that when settlements are based on mixed considerations of liability and defense cost avoidance, only a portion can be attributed to merit. This is in fact the principle of Law and Economics explained by Dr. Bates and reflected in Judge Posner's formula. But the FCR offered no analysis from Dr. Rabinovitz or any other evidence quantifying the extent to which liability as opposed to defense cost avoidance factored into Garlock's settlements. At the end of the day, there is no basis in the record for the FCR to take the position that the full amount of settlements should be accepted as a reflection of Garlock's liability.

---

[66] FCR Brief at 29.
[67] *Id.* at 30.
[68] The FCR does not deny that EnPro's SEC filings described that defense costs were taken into account in Garlock's claims resolution strategy. Among other disclosures, EnPro described that legal fees and expenses added considerably to Garlock's annual costs (EnPro 2006 10-K, at 34 (FCR-39)) and that the overall object of Garlock's resolution strategy was the "reduction of the negative annual cash flow impact from asbestos claims." *Id.* at 39. EnPro also explained that a material risk factor inherent in the litigation was the possibility of "an increase in litigation costs, fees and expenses that are not covered by insurance. *Id.* at 7.

C. Even in the minority of cases where trial risk was a factor, it was trial risk inflated by the non-disclosure of evidence

The evidence at trial left no question that not only were Garlock's settlements driven largely by defense costs, but also that these settlements lacked the integrity necessary to support the estimations the Committee and FCR propose. The Committee's and FCR's responses to Debtors' challenges did not rehabilitate their case.

1. Neither the Committee nor FCR presented witnesses for cross-examination to respond to challenges to the discovery practices some plaintiffs' firms used to drive up settlement values.

The Committee and FCR have spent tens if not hundreds of thousands of estate dollars to avoid producing information that would test the veracity of their settlements-based approach to estimation. The Committee and FCR opposed Debtors' efforts to obtain Trust claims and other information for settled cases; and they likewise opposed discovery from the DCPF and Designated Plaintiffs that the court ordered.[69]

Neither the Committee nor the FCR called any witness to meet or explain the evidence Debtors presented that casts serious doubt on the legitimacy of the settlements at the heart of their approach. No witness from any firm that represented the Designated Plaintiffs (Waters & Kraus, Simon Greenstone, the Shein Law Center, Williams Kherkher, Belluck & Fox, or the David Law Firm) appeared at trial. Only two plaintiffs' firm witnesses were called (Joe Rice and David McClain), and neither addressed anything related to the Designated Plaintiffs or RFA-1 Cases.

[69] *See, e.g.*, Opposition of the Official Committee of Asbestos Personal Injury Claimants to Amended Motion of Debtors for an Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos Claimants (Docket No. 1306); The Official Committee of Asbestos Personal Injury Claimants' Omnibus Objection to: (I) Debtors' Motion for Supplemental Exposure Questionnaire, (II) Debtors' Motion for Supplemental Payment Questionnaire, and (III) Debtors' Motion for Trust Discovery to Settled Claimants (Docket No. 2200); Motion of the Official Committee of Asbestos Personal Injury Claimants for a Protective Order with Respect to Document Demands Included in Garlock's Subpoenas *Duces Tecum* to Five Law Firms (Docket No. 2623).

Mr. Rice serves as the co-chair of the Committee. Debtors offered no evidence of discovery misconduct by the Motley Rice firm but did show that, even after Motley Rice decided to target Garlock in litigation, Motley Rice did not enjoy trial success against Garlock. During the 2000s, Garlock settled mesothelioma claims brought by the Motley Rice firm for an average of $8,973[70] and by firms known to be affiliated with Motley Rice for an average of $14,721.[71] Garlock offered evidence that its proposed plan would likely provide higher average levels of compensation to Motley Rice's clients.[72]

Mr. McClain was a surprise witness the Committee did not disclose until the eve of trial. By withholding its plan to call Mr. McClain until just before trial, the Committee precluded Garlock from any pre-trial discovery of documents related to cases settled by Mr. McClain's firm. Garlock therefore lacked claims-related documents that would have tested the veracity of Mr. McClain's testimony. In any event, like Motley Rice, Mr. McClain's firm did not have trial success against Garlock. Before and after the Bankruptcy Wave, Kazan McClain tried numerous cases against Garlock to verdict, but never won.[73]

Given the abusive practices that discovery in this case revealed, it is not surprising that no witness from any implicated firm was willing to subject the practices of his firm to cross-examination in open court under oath. The failure by both the Committee and the FCR to call any witness to respond to evidence at trial speaks volumes and leaves Debtors' evidence concerning Designated Plaintiffs and RFA-1 Cases unrebutted.

2. Information obtained through the questionnaire process for current claimants and other historical information does not exonerate the firms that used nondisclosure of exposure evidence to drive settlement payments higher

[70] Tr. 4695:18-4697:22 (Gallardo-Garcia); Gallardo-Garcia Rebuttal Demonstrative Slides at 17 (GST-8025).
[71] *Id.*
[72] *See, e.g.*, Tr. 2841:7-19 (Bates).
[73] Tr. 3503:21-3508:15 (McClain).

One of the Committee and FCR's attempts to address Debtors' challenges to settlements focused not on information from settled cases, but information principally from current, unsettled cases. In their briefs, the Committee and FCR argue that information reviewed by Mr. John Henshaw (principally from questionnaires from current claimants[74]) showed many instances where plaintiffs identified specific asbestos products, in contrast to the settled cases Garlock presented at trial.[75] The Committee and FCR argue that exposure admissions by these current claimants show that the nondisclosure by plaintiff firms proved at trial should be viewed as less widespread than the trial evidence would suggest.[76]

But this argument misses the mark. First, Garlock would expect that many current plaintiffs would have identified specific asbestos products in questionnaire discovery. Garlock's witnesses testified that plaintiffs represented by many firms continued to make identifications even after the Bankruptcy Wave.[77] More than 80% of the mesothelioma claims that Garlock resolved throughout its history, including after the Bankruptcy Wave, yielded payments at values of $25,000 or less or were cases dismissed without any payment from Garlock.[78] The kind of strategic non-disclosure practices Garlock observed from firms like Waters & Kraus, Simon Greenstone, the Shein Law Center, and Belluck & Fox were not used by firms to extract high values from Garlock in these low-value settlement cases. The non-disclosure practices Debtors proved at trial were carried out by the firms that made high settlement demands, generally in "driver" cases used to drive up Garlock's settlement values.[79] The fact that many current claimants made more complete exposure disclosure than the firms that targeted Garlock to drive

[74] Tr. 809:5-8, 838:18-840:15 (Henshaw).
[75] Committee Br. at 31; FCR Br. at 33.
[76] *Id.*
[77] Tr. 1409:19-1410:13, 3133:22-3134:18 (Magee).
[78] Tr. 1409:3-6 (Magee); Magee Demonstrative Slides at 2 (GST-8018).
[79] Tr. 1408:24-1409:2 (Magee).

up settlements does not exonerate the practices of those firms or minimize their impact on Garlock. The fact remains that Garlock's past settlements were infected with evidence suppression and are not a fair measure of the merits of claims.

Second, questionnaire materials came from cases that have by now run to the end of the tort system process. Those claims were filed before June 5, 2010 and the majority of claims had been pending for several years by the time claimants answered questionnaires and provided deposition transcripts and other exposure evidence. For most cases, plaintiffs would have settled with all significant tort defendants. The evidence at trial showed that implicated firms withheld information until tort-system settlements were complete. The fact that current claimants provided product information through questionnaires after their tort-system cases were complete is not inconsistent with trial evidence even for those firms.

3. The unrebutted evidence at trial showed that the non-disclosure of Trust claims substantially impacted trial outcomes and how Garlock resolved cases

The Committee devotes substantial portions of its brief trying to argue that Trust claims plaintiffs firms withheld did not mean what they say.[80] Debtors explain below that these contentions are wrong.[81] More immediately, however, Debtors emphasize that the Committee's debate on the quality of evidence Trust claims may provide is completely beside the point of the evidence at trial. No matter what *post hoc* characterization of Trust claims the Committee tries to offer, the *uncontroverted* evidence at trial was that Trust claims, the non-disclosure of Trust claims, and the evidence that supported them materially impacted cases against Garlock.

[80] Committee Br. at 40.
[81] *See* Part I.C.4, *infra.*

Trial evidence showed that when plaintiffs acknowledged their exposures to other companies' products, including asbestos insulation, Garlock almost always won.[82] After the Bankruptcy Wave, when plaintiffs from firms like the Shein Law Center, Waters & Kraus, Simon Greenstone, and Belluck & Fox stopped identifying these exposures, Garlock explored all means to obtain this evidence. Garlock hired experts, sought site and ship records, and looked for co-workers. It also sought Trust claims from plaintiffs and Trusts whenever possible.[83]

Trust claims were the least costly and most effective means to develop this kind of evidence and had a substantial positive impact on litigation, especially when plaintiffs did not admit in tort discovery that they had exposures to Trust products.[84] When Garlock obtained substantial disclosure of plaintiffs' Trust claims or the exposure evidence supporting them, not only did Garlock save litigation costs, Garlock was successful at trial. Messrs. Turlik and Magee testified about the *Messinger*, *Dougherty*, and *Davis* cases where Garlock compelled the production of Trust claims. In each case, Garlock won defense verdicts at trial.[85] In another case, *Simpson*, Garlock obtained Trust submissions and used information from those submissions to develop evidence that led a jury to assign 98% of a verdict to other parties, including 85% to insulation companies. Other than *Simpson*, Garlock did not suffer a verdict after the Bankruptcy Wave in a case in which Garlock had access to evidence of all of a claimant's Trust exposures.

Irrespective of the Committee's "spin" on the meaning of Trust claims, in many jurisdictions, including substantial jurisdictions such as California, New York, and

[82] Garlock won 92% of its cases prior to the Bankruptcy Wave, when claimants admitted their exposures to asbestos insulation and other friable products of co-defendants that filed for bankruptcy. Tr. 1395:17-1396:13 (Magee). The FCR admitted that Garlock's trial risk was lower when plaintiffs made up their cases against Garlock and insulation companies simultaneously. FCR Br. at 34.
[83] Tr. 2263:19-24, 2343:12-17 (Turlik); Tr. 4657:3-5 (Glaspy).
[84] Tr. 2261:24-2263:24 (Turlik).
[85] Tr. 2580:14-25 (Magee); *see also* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 56-57 (GST-8011) (summarizing *Davis*, *Dougherty*, and *Messinger* cases).

Pennsylvania,[86] the availability of Trust claims to defendants means that multiple bankrupts will be added to the verdict form and the jury may assign liability to them. Mr. Turlik explained:

> A. . . . I did want to point out why [disclosure of Trust claims is] so important --
>
> Q. Okay. Please do.
>
> A. -- especially in a state like New York. Your Honor, the more exposures we get, the more identification we get, the better our defenses are, especially the low-dose defense because it shows the volume of exposure. But in New York we also are allowed to put the bankrupts on the verdict form. So what happens is our share of the verdict is elevated, and that is something that we're aware of when we settled these cases. Both that we—that our low-dose defenses diminished, our Chrysotile defense is somewhat diminished, and also that the verdict form itself is going to be limited and, thus, expose us to a potentially higher verdict. That causes a higher trial risk and a higher settlement value.[87]

For these reasons (as noted in Debtors' Opening Brief), courts and legislatures have recognized the unfair prejudice caused to defendants by abusive discovery practices and fraud facilitated by the lack of Trust transparency. Myriad courts and legislatures have entered orders or enacted laws requiring litigants to produce Trust claims in civil actions. On November 13, 2013, the Furthering Asbestos Claim Transparency Act (FACT Act), a bill that would require Trusts to release quarterly reports disclosing claimants who seek compensation, passed the United States House of Representatives.[88] Trust claims are so important, courts in some jurisdictions have entered orders requiring that plaintiffs to disclose and certify that they have filed all Trust claims they intend to file before proceeding to trial.[89]

---

[86] *See* Tr. 2318:5-20, 2272:25-2273:4 (Turlik); Tr. 4654:9-19 (Glaspy). In Pennsylvania, when bankruptcy Trust claims are paid before verdict, reorganized debtors are added to the jury form.
[87] Tr. 2318:5-20 (Turlik).
[88] Daniel Fisher, "House Passes Bill That Would Open Asbestos Trusts to Scrutiny," *Forbes* (Nov. 11, 2013), *available at* http://www.forbes.com/sites/danielfisher/2013/11/13/congress-mulls-law-opening-asbestos-trusts-to-scrutiny/.
[89] Tr. 2271:19-24 (Turlik).

There is no better evidence of Trust claims' importance than the fact that the plaintiff firms that try to drive settlements up routinely withheld and delayed Trust claims to deny Garlock access to them while their clients denied having knowledge of any exposure to Trust products. Peter Kraus conceded at his deposition that it would be typical for his firm to delay filing wherever filings could lead to "plac[ing] the bankrupt defendants' products on the verdict form and allow[ing] the defendants in the litigation case to argue for a smaller share of the several liability."[90] Benjamin Shein, the 30(b)(6) designee of the Shein Law Center, also admitted at his deposition that his firm delays filing until after the completion of tort litigation so defendants do not have Trust claims at trial.[91]

Garlock's trial evidence showed the extensive efforts firms make to conceal Trust claims. For example, the Belluck & Fox firm, in two cases (*Homa* and *Beltrami*), defied the New York City CMO and denied (to Garlock) its clients' plans to file Trust claims so Garlock would not have those claims at trial. Simultaneously, these plaintiffs denied to Garlock that they had exposures to the products for which they subsequently would file successful Trust claims. No matter what gloss the Committee tries to use to diminish the value of Trust claims, the uncontroverted evidence at trial proved that they were material to tort system litigation and substantially impacted the resolution of Garlock's cases.

4. Trust claims, plan ballots, and Rule 2019 statements are verified statements of exposures to bankrupts' products, which claimants withheld in tort cases against Garlock

In response to Trust claims and ballots that Garlock offered as evidence of claimants' exposures to products of other companies that the same claimants did not disclose in their tort

[90] Kraus Dep. at 41:5-42:14.
[91] Shein Dep. at 43:24-44:16. Mr. Shein further testified that his firm's "goal is to maximize a client's recovery, okay, and in order to do that, what we focus on for the deposition is the viable, non-bankrupt companies. That's our job, okay." Shein Dep. at 64:22-65:16.

cases, the Committee asserts that these documents cannot be relied on as evidence of claimants' exposures to bankrupts' products. This is incorrect as a matter of law and not supported by the record.

Tort law and the Bankruptcy Code require that claimants have proof that debtors contributed to their injuries before they can participate in bankruptcy cases. Each document Debtors rely on is certified under penalty of perjury to be accurate and complete. And each states unequivocally on its face that claimants have claims against relevant debtors based on exposures to products for which such debtors have legal responsibility. In each case, the document required claimants or their lawyers to provide a greater assurance of accuracy than this Court required in personal injury questionnaires, in which lawyers certified that questionnaire answers complied with Bankruptcy Rule 9011.

According to the Committee, however, when claimants' lawyers provided the certifications, they were not asserting that their clients truly had exposures to products for which debtors had responsibility.[92] The Committee overlooks that Courts in previous cases relied on lawyers' certifications of their clients' exposures to confirm reorganization plans that transferred tens of billions of dollars from debtors to Trusts created for the benefit of such lawyers' clients. Trusts have likewise relied on Trust claim certifications in distributing billions of dollars to claimants which in turn funded billions of dollars of contingency fees to lawyers making the certifications. The Committee's position that this Court should not give the same evidentiary weight that claimants and lawyers sought and obtained from prior courts is completely without merit.

Trust Claims

[92] Committee Br. at 37-38.

There is no dispute that Trusts pay claims only when claimants provide "meaningful and credible evidence of exposure" to the relevant reorganized debtors' products.[93] Trusts permit claimants to prove exposure through sworn statements, affidavits, or deposition testimony. Some Trusts also permit claimants to offer proof based on presumed worksite lists. In the latter case, however, claimants still must assert exposure and certify the debtors' products to which they were exposed and the dates of such exposures.

Debtors offered evidence of many claims where claimants provided affidavits (often prepared by Committee firms) swearing that claimants inhaled asbestos fibers from particular companies' products.[94] The affidavits offered contradicted exposure testimony and discovery answers claimants provided to Garlock during tort discovery. The Committee contends that even these Trust claims are untrustworthy "hearsay" that must be given minimal weight because they were not based on personal knowledge and, remarkably, because they conflict with the evidence claimants provided in their tort cases.[95] The Committee urges this Court to resolve conflicts in claimants' sworn positions regarding their exposures against Garlock. The Court should reject this position. The affidavits and declarations offered by Garlock generally state that they are based on personal knowledge of claimants or their representatives.[96] Claimants swore to exposures to companies' products in the bankruptcy and Trust systems for the same reason they swore to exposure to Garlock's products in the tort system: to obtain money. There is no basis

[93] *See, e.g.*, Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures § 5.7(b)(3) (GST-1542); Owens Corning/Fibreboard Asbestos Personal Injury Trust Distribution Procedures at § 5.7(b)(3) (GST-1593).
[94] *See, e.g.*, Golini Armstrong Sworn Statement at Shein 01901 (GST-2887); Ornstein AC&S Declaration at Simon 28055 (GST-3873).
[95] Committee Br. at 40.
[96] *See, e.g.*, Affidavit of Charles C. White (Aug. 12, 2008) at Simon 27505 (Babcock & Wilcox) (GST-5981); Affidavit of Bernard F. Massinger at Shein 00788 (GST-3686) (supporting Fibreboard trust claim).

for this Court to rely on claimants' exposure assertions against Garlock but discount those against reorganized defendants.[97]

The Committee's principal contention is that site list claims are not evidence of exposure but nothing more than assertions that claimant were "working at a listed site at a particular time in a particular occupation in order to be paid by a trust."[98] This statement is squarely refuted by the claim forms themselves, which require assertions by claimants of exposures to debtors' products and the dates such exposures occurred, and certifications to the accuracy of such assertions.

To take an example from the trial, the Committee attempted to demonstrate its point on cross-examination of Professor Brickman when it contended that Robert Treggett's claim against the Babcock & Wilcox Trust, which was based on a site list, did not assert exposure to a B&W product but merely established Mr. Treggett's presence at a particular industrial site.

Contrary to the Committee's position, Professor Brickman pointed out that language from the claim form plainly required Mr. Treggett to certify to exposure to specific B&W products.[99] First, the B&W form explains the meaning a site list claim:

---

[97] The Committee is particularly incensed by Garlock's pointing out inconsistent exposure stories Charles White gave under oath in the tort case against Garlock and that his wife gave under oath subsequently to support Mr. White's successful attempt to obtain money from Trusts. Committee Br. at 40 n.168. Mrs. White swore based on personal knowledge that Mr. White told her after his disease was diagnosed that he believed his exposure to pipe covering aboard the USS Mountrail while at the Norfolk Navy Shipyard caused his mesothelioma. This testimony contradicted his testimony against Garlock that he was not exposed to asbestos while onboard any ships. 8/11/06 White Dep. at 112:7-113:6 (GST-5612). The Committee never explains this patent inconsistency, but rather points out that Mrs. White said this occurred at the Norfolk Navy Shipyard instead of Norfolk Shipbuilding and Drydock, where Mr. White worked. But it is not at all implausible for workers at Norfolk Shipbuilding to work at Norfolk Shipbuilding and Drydock as well, as the Norfolk Navy Shipyard was close to the Norfolk Shipbuilding and Drydock. 8/11/06 White Dep. at 21:10-22:3 (GST-5612).

[98] Committee Br. at 38.

[99] Tr. 1321:8-1322:25 (Brickman); Treggett Babcock & Wilcox Trust Claim at Waters 02490 (GST-5481). Remarkably, the Committee used this same Trust claim during Professor Brickman's cross-examination, and claimed that it contained only evidence that was disclosed in the tort system. Tr. 1313:3-15 (Brickman). To the contrary, in addition to worksite-based exposure allegations, this Trust claim contained specific admissions of exposure to "BW Boilers and asbestos cloth," which were never disclosed in the *Treggett* tort case. Treggett Babcock & Wilcox Trust Claim at Waters 02491 (GST-5481) ("Name of B&W product(s), if applicable, to which the injured party is alleging exposure: BW Boilers and asbestos cloth.").

> "For B&W exposures, a list of approved B&W sites is available on the Trust website www.bwasbestostrust.com. Please reference this list and enter the Approved B&W Site Code in item #1 below.
>
> If the site you are alleging exposure to B&W products or services is not on the approved B& W site list, provide independent documentation of meaningful and credible evidence of exposure to asbestos-containing products manufactured by B&W or for which B&W is liable. This may be established by documentation including, but not limited to, the following:
>
> - An affidavit of the injured party (an example is included in the filing instruction)
> - An affidavit of a co-worker
> -An affidavit of a family member in the case of a deceased claimant
> - Invoices
> - Construction or similar records
> -Sworn statement, interrogatory answers, sworn work history, or deposition"[100]

The Form then requires claimants to identify the place of B&W exposure:

> "1. Site/Plant/Ship where Exposure Occurred:
> If the site is on the approved B&W site list, enter the Site Code from Exhibit A (available on website):
>
> Approved B&W Site Code (see Exhibit A): _____"

Waters & Kraus provided a Site Code. The Form then requires claimants to identify the B&W products to which they were exposed:

> "Name of B&W product(s), if applicable, to which the injured party is alleging exposure:"

Waters & Kraus stated that Mr. Treggett was exposed to "BW Boilers & asbestos cloth." And then the Form requires claimants to identify the dates of B&W exposure:

> "2. Date Exposure Began: _____ (rnrn/yyyy) Date Exposure Ended: _____ (mm/yyyy)'

Waters & Kraus indicated that Mr. Treggett's exposure occurred in June 1965.

[100] Treggett Babcock & Wilcox Trust Claim at Waters 02490 (GST-5481).

Finally, the Form requires claimants or their lawyers to "certify under penalty of perjury that the information is accurate and complete." Waters & Kraus provided this certification for Mr. Treggett. The only reasonable interpretation of Mr. Treggett's Babcock & Wilcox claim is that Mr. Treggett's lawyers certified under penalty of perjury that he was exposed to B&W Boilers and asbestos cloth during June 1965 at an approved B&W work site.

Although claim forms slightly vary, Mr. Treggett's B&W form, highlighted by the Committee at trial, is a good example of the requirements of the standard, modern day form. Questions on forms elicit details about claimants' exposure which unquestionably reflect claimants' assertions and acknowledgement of exposure. For example, a claim from the *Brennan* case includes this basic question: "Name of Eagle-Picher Product(s) to which [he] was exposed." That claimant's response ("Super 66," an insulating cement) reflects his unequivocal assertion (and admission) that he was exposed to that product. [101] The Trust claims in evidence at trial provide myriad examples of these kinds of assertions that are throughout claimants' submissions.[102]

---

[101] *See* Brennan Eagle-Picher Trust Claim at Shein 00666 (GST-1980) ("Name of Eagle-Picher Product(s) to which Injured Party was exposed: Super 66 [insulating cement].").

[102] *See, e.g.*, Homa Plibrico Trust Claim at David 01592 (GST-3608) ("Name of all Plibrico Asbestos Trust products to which injured party was exposed: Pilsulate Insulating Cement #101."); Brennan Eagle-Picher Trust Claim at Shein 00666 (GST-1980) ("Name of Eagle-Picher Product(s) to which Injured Party was exposed: Super 66 [insulating cement]."); Golini Armstrong Sworn Statement at Shein 01901 (GST-2887) (sworn statement regarding Armstrong World Industries pipecovering exposure); Massinger Eagle-Picher Trust Claim at Shein 00675 (GST-3684) (responding to the following prompt: "Describe How Injured Party was Exposed to Eagle-Picher Product through the Other Person" and describing, for a separate prompt, Eagle-Picher products as "insulation of pipes, steamlines and boilers"); Torres Owens Corning Trust Claim at WK 0092 (GST-4929) (disclosing that "Injured party handled raw asbestos fibers on a regular basis"); Beltrami Kaiser Aluminum Trust Claim at David 01918 (GST-1848) ("Name of KACC . . . products to which injured party was exposed: Kaiser M-Block Insulation."); Flynn Celotex Trust Claim at Waters 02988 (GST-2781) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: insulating cement, fireproofing [and] pipecovering."); Treggett Babcock & Wilcox Trust Claim at Waters 02494 (GST-5481) ("Name of B&W product(s), if applicable, to which the injured party is alleging exposure: BW Boilers & asbestos cloth."); Williams Celotex Trust Claim at Waters 03666 (GST-6050) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: Carey insulation."); Taylor Kaiser Aluminum Trust Claim at Waters 01762 (GST-4475) ("Mr. Taylor was present while others worked with Kaiser Vee Block Mix during overhaul."); Steckler Celotex Trust Claim at Waters 00838 (GST-4357) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: Careytemp Pipe Covering and Block Insulation."); White Celotex Trust Claim at Simon 27961 (GST-

In sum, Trust claims are based on verified assertions of exposure and therefore provide evidence of claimants' exposures to the products of reorganized defendants that created the Trusts.

To support its position that Trust claims do not provide evidence of exposure, the Committee relies on *Scapa Dryer Fabrics, Inc. v. Saville*, 16 A.3d 159 (Md. 2011).[103] But that case did not deal with Trust *claim forms* at all. It dealt with *settlement agreements* between a plaintiff and a Trust that had paid a claimant, and held (unsurprisingly) that when such a settlement agreement denies liability, it does not provide evidence of the Trust's liability for that purpose. *See id.* at 174 n.12 (characterizing issue in the case as "the proper handling of § 524(g) Trust **settlement agreements** in concert with state laws implementing the Uniform Contribution Among Joint Tort-feasors Act") (emphasis added); *id.* at 179 (question in case deals with "**settlement agreements**," not claim forms) (emphasis added); *id.* at 181 (permitting discovery of "**settlement agreements** between Mr. Saville and § 524(g) Trusts" to determine whether agreements contained "denials of liability"). This was a case about how Maryland treats releases, not how Maryland treats Trust claim forms containing the plaintiff's admissions of exposure. The only thing this case shows is what Debtors have contended at every stage of this case: that settlements alone do not demonstrate liability. *See id.* at 179 ("One will not be considered a joint tortfeasor . . . merely because he or she enters a settlement and pays money.").

In cases the Committee does not cite, on the other hand, courts have repeatedly held that trust claims provide evidence of exposure. *See In re Asbestos Litig.*, MDL No. 2004-03964 (Tex.

5993) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: Carey asbestos products."); Reed Eagle-Picher Trust Claim at Simon 27940 (GST-4190) ("Name of Eagle-Picher Product(s) to which Injured Party was exposed: Various [Eagle-Picher] Cements."); Ornstein AC&S Declaration at Simon 28055 (GST-3873) (disclosing "remov[ing] and replac[ing] insulation" and exposure to Armstrong 85% Magnesia Pipe Covering and Block and Armstrong Hi-Temp pipe covering).

[103] Committee Br. at 38.

Harris County Dist. Ct. Jan. 16, 2009, Davidson, J.) ("I have consistently received into evidence BTFs [bankruptcy trust forms]…as a statement of a party opponent as proof of exposure to the product of an alleged RTP [Responsible Third Party]…. I will continue to find a written statement by a Plaintiff to a bankruptcy trust as evidence of exposure."); *In re Eighth Judicial Dist. Asbestos Litig. (Drabczyk v. Amchem Prods., Inc.)*, No. 2005/1583, at 5 (N.Y. Sup. Ct. Erie County Jan. 18, 2008) (Decision and Order) (bankruptcy Trust proofs of claim "must be disclosed. It seems likely that proof of claim forms submitted by plaintiffs in asbestos litigation to trusts established by bankrupt entities may contain information concerning product identification, the claimant's work history and exposure to asbestos, causation and apportionment of fault …."); *In re New York City Asbestos Litig. (Negrepont v. A.C.&S., Inc.)* No. 120894/01 at 3-4 (Sup. Ct. NY. Co. Dec. 11, 2003, Freedman, J.) ("[W]hile the proofs of claims are partially settlement documents, they are also presumably accurate statements of the facts concerning asbestos exposure of the plaintiffs. While they may be filed by the attorneys, the attorneys do stand in the shoes of the plaintiffs and an attorney's statement is an admission under New York law."); *Szostak v. A-B Elec. Supply Co.*, No. L-9151-02 at 3-4 (N.J. Super. Ct. Middlesex County Nov. 15, 2006) (Supplemental Recommendation to Compel Discovery and to Issue Commissions for Out-of-State Discovery) ("[T]he factual information contained in the [Trust claims] is relevant to plaintiffs' exposures to all types of asbestos-containing products of various manufacturers. . . . Based on the type of detailed exposure information sought by the [Trust claims], I believe that plaintiff's statements, whether certified by the plaintiffs themselves or by their attorneys acting on plaintiffs' behalf, may contain factual information regarding plaintiffs' exposures . . . .").

The Committee's reference to Judge Davidson's January 16, 2009 MDL order (*In re Asbestos Litig.*, No. 2004-03964, slip op. at 5-6 (Tex. Dist. Ct. Jan. 16, 2009)) is highly misleading. Since 2007, Texas law has not permitted assigning liability to *any* company upon mere proof of exposure—the theory the Committee uses in this case to assign liability to Garlock. Rather, the plaintiff, similar to federal law under Rule 702 and *Daubert*, must quantify his dose of exposure to the product, a burden very few plaintiffs can meet. *See Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 773 (Tex. 2007). The defendant bears the same burden if it wishes to lay off liability on a third party. But the key point is that in Texas, Garlock's likelihood of losing a case in the first place is virtually nil, as Mr. Iola, who handles all settlements for Waters & Kraus, admitted at deposition: "We have very few cases in Texas. As you know, the Texas courts and the law of the cases really don't allow us to prosecute cases effectively in Texas for mesothelioma."[104] Plaintiffs were only able to hold Garlock liable in Texas by telling stories about exposures to crocidolite gaskets in the *Phillips* and *Torres* cases that have now been proved to be fraudulent. In any event, Judge Davidson, like all other judges to consider the issue, has repeatedly ruled that Trust claim forms are admissible proof of exposure to a responsible third party's products.[105]

It follows that intentional concealment of Trust claims is suppression of exposure evidence. Asbestos trial courts have routinely castigated the Committee's constituent firms when they have tried to make the same arguments about worksite based claims. For instance, Professor Brickman recounted at trial the facts of the *Stoeckler* case in Texas where a court rebuked Waters & Kraus attorneys for concealing Trust claims, rejecting their contention that they were work-

[104] Iola Dep. at 67:21-25.
[105] *Id.*

site based and irrelevant.[106] Professor Brickman also reviewed several other cases where frontline trial courts ordered relief for defendants when Trust claims were concealed.[107]

Even witnesses aligned with the Committee, when examined on this point, conceded that Trust claims acknowledge a plaintiff's exposure to Trust products. For example, at deposition, Jeffrey Simon, the 30(b)(6) designee of the Simon Greenstone firm, testified that his firm treats allegations of exposure in Trust claims as having the same quality as allegations to support a tort system claim:

> [I]f you are talking about the allegation of exposure to a particular brand, an asbestos-containing product that was made by a former asbestos product manufacturer now in bankruptcy, yes, we would make that allegation only on the same basis that we would allege it in a tort case. *We do not have a lesser standard for making the allegation just because it's a trust claim when it is an allegation of asbestos exposure under oath*.[108] (emphasis added)

Likewise, Mr. McClain testified that his firm, Kazan McClain, files Trust claims based on actual exposures.[109] Even Mr. Patton, the "expert" the Committee called at trial, admitted that Trust distribution procedures require that all claimants demonstrate "meaningful and credible exposure" to the debtor's products.[110] Even so-called worksite-based claims, Mr. Patton admitted, contain information that shows a claimant would be able to prove exposure to the debtor's product if required to do so, and the Committee's brief admits much the same.[111] Moreover, Mr. Patton and Mr. McClain agreed that Trusts use exposure criteria that are at least as stringent as those applied by debtors when they resolved cases in the tort system.[112]

---

[106] Tr. 1183:5-1185:23, 1320:10-1321:7 (Brickman); Transcript of Trial at 71-74, *Stoeckler v. Am. Oil Co.*, No. 23451 (Tex. Dist. Ct. Angelina County Jan. 28, 2004) (GST-0661).
[107] Tr. 1176:6-1193:6 (Brickman) (reviewing cases from Ohio, Virginia, Texas, New Jersey, and Delaware).
[108] 1/4/13 Simon Dep. at 134:6-14.
[109] Tr. 3503:4-12 (McClain).
[110] Tr. 3726:19-3729:13 (Patton).
[111] Tr. 3736:24-3737:21 (Patton); Committee Br. at 39 (noting that exposure at work sites is "established by abundant proof in prior cases").
[112] Tr. 3730:12-3731:5, 3731:20-3733:5 (Patton); Tr. 3503:13-20 (McClain); *see also* Tr. 4065:14-4066:12 (Peterson).

Ballots

The Committee also contends that ballots claimants cast as creditors do not mean that claimants assert that they hold claims. This is in stark contrast to Judge Fitzgerald's statement that when an asbestos claimant casts a ballot, "[t]hey're taking a position here that says they have a legitimate claim, they've sworn to that fact under penalty of perjury, and the ballot is what determines that."[113] According to the Committee, when claimants cast a ballot as an asbestos creditor, they hold only "a good-faith basis to believe they *might* have a claim against the trust on *any* theory"—not a bona-fide claim against that debtor.[114]

The plain language from ballots and balloting procedures offered in evidence refute the Committee's assertion.[115] For instance, in the 2006 solicitation in *Owens Corning*, balloting procedures dictated that an attorney who voted a master ballot on behalf of mesothelioma claimants must certify, under penalty of perjury, that each voting claimant "ha[d] experienced Owens Corning Exposure."[116] The ballot (and approved balloting procedures) defined "Owens Corning Exposure" as: "meaningful and credible exposure" to an asbestos product "supplied, specified, manufactured, installed, maintained, or repaired by Owens Corning and/or any entity . . . for which Owens Corning has legal responsibility."[117]

Nothing in the ballot or the approved procedures authorized attorneys to vote for persons on the basis that they "believe they might" have a claim against Owens Corning "on any theory." Those attorneys certified those claimants were exposed to Owens Corning's asbestos products and were therefore creditors in those cases.

---

[113] Transcript of Hearing at 43:5-17, *In re Pittsburgh Corning Corp*., No. 00-22876 (Bankr. W.D. Pa. Jan. 13, 2010) (Docket No. 7422); *see also* Tr. 2268:20-2269:11 (Turlik) (describing ruling).
[114] Committee Br. at 41 (emphasis in original).
[115] *See generally* Debtors' Summary of Evidence Regarding Certain Voting Procedures and Ballot Certifications (GST-8010).
[116] 2006 Owens Corning Class A7-M Ballot at 4 (GST-1448).
[117] *Id.* at 9.

Mr. Patton, in this instance too, contradicted the Committee's position. On cross-examination he admitted that, minimally, claimants who vote have a "good faith basis to believe they have exposure"[118] to the debtors' products. He also conceded that the 2003 *Owens Corning* and *Pittsburgh Corning* cases were cases where the parties plainly understood that votes in those cases meant that they were certifying to meaningful and credible exposure to those debtor's products.[119]

Rule 2019 Statements

The Debtors also offered certain Rule 2019 Statements as further evidence that claimants failed to provide discovery identifying that they had claims caused by asbestos products of other debtor companies. Dr. Bates did not rely on 2019 statements, contrary to the Committee's statements in their brief and proposed findings of fact.[120]

The Committee tries, nonetheless, to diminish the significance of its constituent firms' 2019 statements that say they represent mesothelioma claimants who have claims against specific debtors.[121] Although the Committee argues that the 2019 statements do no more than "identify[] a client in an asbestos bankruptcy," the Committee never cites the language from an actual Rule 2019 Statement in evidence. The Rule 2019 Statements in evidence say otherwise. They state, under penalty of perjury, that the filing attorney has "personal knowledge" that listed claimants (which include one or more Designated Plaintiffs) "have been injured by asbestos or asbestos-containing products mined, manufactured, marketed, distributed, sold, installed and/or produced" by the debtors in the pertinent cases.[122] These documents contain further sworn

[118] Tr. 3774:11-12 (Patton); *see also* Tr. 3693:6-9, 3697:8-11, 3759:12-19 (Patton).
[119] Tr. 3770:24-3773:17, 3776:24-3777:17 (Patton).
[120] *Compare* Committee Br. at 60 *with* Tr. 3027:17-19 (Bates).
[121] Committee Br. at 42; Tr. 3788:5-18 (Patton).
[122] *See, e.g.*, Nineteenth Amended Verified Statement of Waters and Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 at Waters 02178 (GST-5459).

statements that the law firm's clients have authorized the firms to appear for them in the bankruptcy case.

The language below from a statement filed by Waters & Kraus for a Designated Plaintiff in the Pittsburgh Corning Corporation bankruptcy case exemplifies what the statements of record actually say:

> I, Leslie MacLean, under penalty of perjury pursuant to the laws of the United States of America, declare as follows:
>
> l. I am an attorney with the law firm of Waters & Kraus LLP (the "Firm"). I am a member in good standing of [the] bar of the State of Texas. I am admitted to practice in the United States District Courts for the Northern District of Texas.
>
> 2. I make this Verified Statement ("Statement") pursuant to Federal Rule of Bankruptcy Procedure 2019 and the Revised Order Requiring Filing of Statements Pursuant to Fed. R. Bankr. P. 2019 (the '"Order"). I am involved in the Firm's representation of personal injury claimants and *based upon a review of the business records of the Firm, l have personal knowledge of the facts set forth herein.*
>
> 3. *As of the date of this statement, the Firm represents a number of personal injury claimants (the "Creditors" or individually, a "Creditor") who have been injured by asbestos or asbestos-containing products mined, manufactured, marketed, distributed, sold, installed, and/or produced by the above referenced debtors and debtors-in-possession (collectively, the "Debtors").* As a result of their injuries, the Creditors hold claims against, *inter alia,* one or more of the debtors or debtors-in-possession. *Pursuant to the requirements of the Order, attached hereto as Exhibit "A" is a list of the Creditors represented by the firm,* including the name and personal address of each Creditor; the form of agreement authorizing the Firm to act on behalf of each Creditor; the amount of each Creditor's claim if liquidated, and for unliquidated claims an indication that such claims are unliquidated; the date of acquisition of each Creditor's claim; the type of disease giving rise to each Creditor's claim; and a recitation of the pertinent facts and circumstances in connection with the employment of the Firm by the Creditor.
>
> 4. Each of the Creditors has employed the Firm by means of a contract between the Firm and the Creditor, or between the Creditor and referring counsel. *Each of the Creditors has authorized the Firm to act on their behalf in this matter,* among others, by executing a General Power of Attorney. Pursuant

> to the requirements of the Order, a blank, unredacted exemplar of the General Power of Attorney is attached hereto as Exhibit "B".[123]

The Committee contention that the Rule 2019 Statements offered by Garlock are not sworn statements by each Designated Plaintiff's lawyers, as authorized by the Designated Plaintiffs, that the asbestos-containing products of the bankrupt companies contributed to the Designated Plaintiffs' injuries, is completely lacking in merit.

5. The Committee's attempt to shift blame to Garlock to exonerate its constituent firms falls flat

The Committee tries to blame Garlock for its constituent firms' failure to disclose evidence. First, the Committee misleadingly splices testimony from Mr. Glaspy's experience to make the false claim that Garlock did not request Trust claims in discovery.[124] The testimony the Committee cites was about Mr. Glaspy's attempts to obtain Trust claims in the "early 2000s," before California courts began compelling the production of Trust claims—not Garlock's discovery practices.[125] The evidence at trial was uncontroverted that Garlock sought Trust claims in every case possible.[126] Garlock presented evidence at trial about the cases where it was able to compel plaintiffs to produce them (*Dougherty*, *Messenger*, *Davis, Simpson*), in which Garlock obtained successful results.[127] Even plaintiff attorneys acknowledged Garlock's persistent

[123] *Id.* (emphasis added).
[124] Committee Br. at 35-36.
[125] Tr. 4657:13-17 (Glaspy).
[126] Tr. 3245:7-12 (Magee) ("Q. Well you had Mr. Cassada on the bankruptcy cases from a very early date, didn't you? A. We tried to. That's where we tried to – there was a sealed door there, a closed curtain; no information available to us about who was making claims and who was being paid claims.").
[127] Tr. 2580:14-25 (Magee); *see also* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 56-57 (GST-8011) (summarizing *Davis*, *Dougherty*, and *Messinger* cases); Debtors' Opening Br. at 25.

demands. Joe Belluck, for instance, described Garlock's dogged requests,[128] as did Jeffrey Simon.[129]

Second, the Committee argues that, faced with the unavailability of evidence after the Bankruptcy Wave, Garlock should have "readily discern[ed]" that plaintiffs would have in fact, suffered the exposures they no longer acknowledged and Garlock should have "anticipated" those plaintiffs would file the Trust claims they did not disclose.[130]

Fundamentally, the Committee's argument means that plaintiffs and their counsel are excused from providing complete, honest responses in tort-system discovery because defendants, like Garlock, can guess what their discovery responses should be. That position runs counter to the truth seeking function of our courts and the fundamental obligations of litigants in civil discovery.

A brief evaluation of how the Committee's premise would have applied to Garlock in actual cases shows how preposterous it is. For instance, at trial, Mr. Glaspy described the *Ornstein* case brought by the Simon Greenstone firm. There defendants expected that the plaintiff, who had been stationed onboard the USS Estes, would have been exposed to multiple pipe covering and insulation products plus multiple other asbestos products in the ship's engine and boiler rooms. When he was asked about these products and work in boiler rooms while

[128] Belluck Dep. at 151:19-24 ("I know that at some point in April of 2009, Ted Eder, who was a lawyer for Segal, McCambridge, contacted Jordan Fox, and asked if any trust claims had been filed on behalf of Mr. Homa, and was advised that there were none that we were aware of.").
[129] 1/4/13 Simon Dep. at 67:9-68:12 ("I don't recall how often Garlock filed [a motion to compel the production of trust claims]. I have seen motions filed by Garlock or someone else of this type before.").
[130] Committee Br. at 35 ("Garlock had a similar ability to understand what trust claims a plaintiff had made or would likely make"); *id.* at 36 (". . . Garlock was well aware of what trust claims a plaintiff could make."); *id.* ("[L]itigating defendants can readily discern what trust recoveries may be anticipated for a given claimant.").

onboard, however, Mr. Ornstein denied the kind of exposure the Committee says Garlock should have "anticipated." [131]

Written discovery responses in that case, prepared by Simon Greenstone, plainly stated there was no evidence of his exposure to any bankrupt companies' products.[132] At deposition the plaintiff testified that he did not see pipe covering being removed or installed on the USS Estes and denied (no less than six times)—being present in and around boilers on the ship.[133] With this record, Garlock had no basis to "readily discern" or "anticipate" that Mr. Ornstein would file Trust claims. Had his case gone to trial, Garlock had no ability to contend he suffered those exposures or would benefit from those claims because he denied the factual basis for them.

Mr. Ornstein filed Trust claims—eleven in all—based on the exposures he denied to Garlock. One of his claims was based on his inhalation of asbestos from doing hands-on work with pipe covering and insulation that he had denied.[134] Other Trust claims were based on the very work in boiler rooms he had insisted never occurred.[135] The demonstrative below highlights his contradictory Trust submission.

---

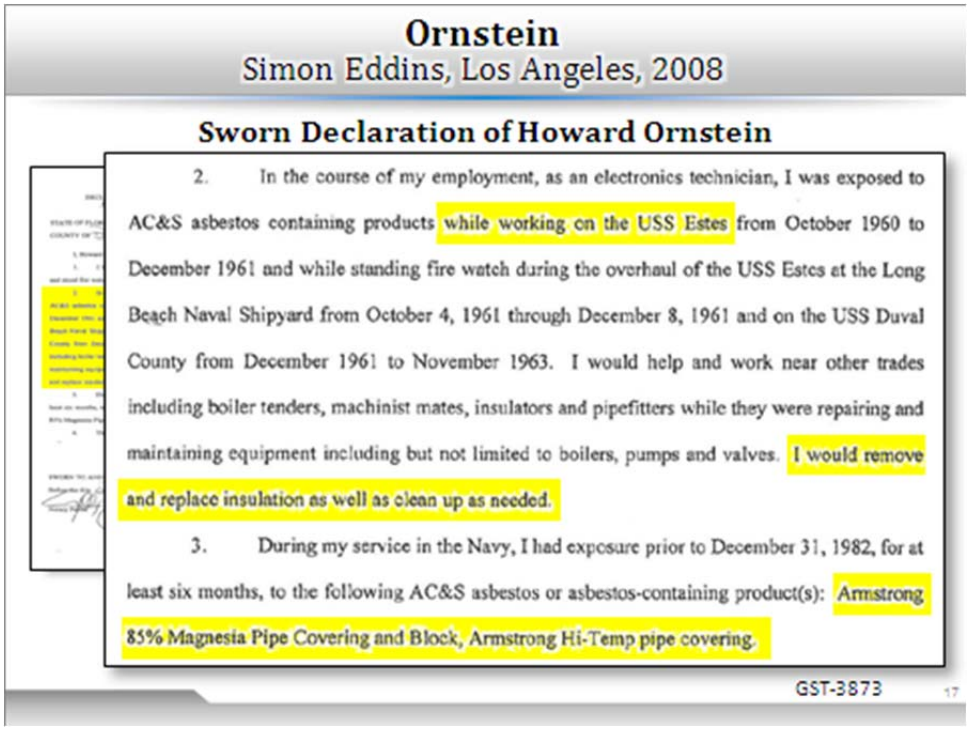
[131] 6/3/08 Ornstein Dep. at 107:9-13 (GST-3832) ("Do you have any reason to believe you may have been exposed to any asbestos in the engine room or the fire room or the boiler room on the [USS] Estes? A. No."); 6/4/08 Ornstein Dep. at 363:23-364:1 (GST-3833) ("Q. To the best of your knowledge, did you ever work with or around any type of boilers when you were on the [USS] Estes? A. No."); 6/5/08 Ornstein Dep. at 527:12-14 (GST-3834) ("[Y]ou've never been around the boilers; right? A. Right."); 6/5/08 Ornstein Dep. at 527:9-11 (GST-3834) ("Q. With you own eyes did you ever see anyone removing insulation off of the pipes? A. No. Q. With your own eyes did you ever see anyone applying or installing insulation to pipes? A. No.").

[132] Plaintiffs' Responses to General Order Standard Interrogatories Propounded by Defendants at 13 (GST-0532).

[133] *See, e.g.*, 6/3/08 Ornstein Dep. at 107:9-13 (GST-3832) ("Do you have any reason to believe you may have been exposed to any asbestos in the engine room or the fire room or the boiler room on the [USS] Estes? A. No."); 6/4/08 Ornstein Dep. at 363:23-364:1 (GST-3833) ("Q. To the best of your knowledge, did you ever work with or around any type of boilers when you were on the [USS] Estes? A. No.").

[134] Declaration of Howard Ornstein (June 18, 2009), at Simon 28055 (GST-3873) (attesting that on board the ships he personally "would remove and replace insulation," including pipe insulation such as Armstrong 85% Magnesia Pipe Covering and Block, and Armstrong Hi-Temp pipe covering).

[135] Declaration of Howard Ornstein (Mar. 12, 2009) at Simon 28226 (GST-3878) (attesting that "[d]uring my service in the Navy, I had exposure prior to December 31, 1982, for at least six months, to the following Combustion Engineering asbestos or asbestos-containing product(s): Combustion Engineering Boilers.").



Evidence from other Designated Plaintiff cases presented at trial makes the same point. In the environment after the Bankruptcy Wave, the Committee's "anticipation cures non-disclosure" theory would not have helped Garlock at all. For instance, although Garlock might have anticipated in *Massinger* that that plaintiff, who worked in Air Force power generation plants, would make claims based on his work in that setting, he denied exposure that would support those claims.[136] His later submissions to Trusts, supported by sworn declarations, said otherwise.[137]

Likewise, Garlock would have expected in *White* that the plaintiff would have exposures from work on vessels such as the USS Mountrail and USS Sea Lion, ships overhauled in the shipyard where he worked plus further exposure while serving in the Coast Guard. He also

[136] *See, e.g.*, 7/2/08 Massinger Dep. at 27:12-16 (GST-3671) ("Q. . . . [D]id you work with or around any asbestos-containing products at this job as a power production technician at the Dover, Delaware base? A. At Dover, no.").
[137] Affidavit of Bernard F. Massinger at Shein 00788 (GST-3686) (attesting to asbestos exposure at the Dover Air Force Base).

denied exposures in those settings,[138] then made Trust claims, supported by sworn declarations, that said otherwise.[139] A final example is the *Treggett* case where Garlock would have anticipated that the plaintiff was exposed to Unibestos on board a submarine and to many asbestos products on assignment to the Mare Island Shipyard. He vigorously denied those exposures, and his counsel even said the Unibestos exposure "is not true."[140] He later made claims based on work at the Mare Island Shipyard[141] and had already, months before trial, cast a reorganization ballot certifying to his Unibestos exposure.[142]

6. The one case the Committee focuses on is one where Garlock did not have discovery in this case and does not support that plaintiffs made disclosures

Rather than try to explain the Designated Plaintiff cases, the Committee tries to contend that Garlock's witnesses did not examine the Designated Plaintiff cases before they testified, when in fact they did.[143] In making its charge, the Committee points to the production of a summary memorandum Garlock produced to the Committee, the FCR, and all relevant witnesses and ignores the witnesses' testimony about their reviews.[144] For instance, the Committee's brief uses the false quotation "spot-checked" [145] to describe Professor Brickman's review, when in fact his review was thorough:

---

[138] 8/11/06 White Dep. at 168:3-7 (GST-5612) ("Q. Do you believe you were exposed to asbestos containing products when you were in Coast Guard? THE WITNESS: No."); *id.* at 112:7-113:6 (GST-5612) (denying exposure to asbestos aboard ships).
[139] Affidavit of Charles C. White (Aug. 12, 2008) at Simon 27505 (Babcock & Wilcox) (GST-5981) (attesting to exposure to asbestos while serving in the Coast Guard); Declaration of Barbara Lorton (Apr. 1, 2010), at Simon 27923 (GST-5991) (declaring, in support of a Western Asbestos trust claim, that Mr. White "was exposed to asbestos while working on the USS *Mountrail*" and that Mr. White "indicated to me that he believed that his exposure to pipe insulation while on the USS *Mountrail* APA-213 while it was at the Norfolk Naval Shipyard in Norfolk, VA was contributory to his Mesothelioma.").
[140] 10/8/04 Treggett Tr. 5742-44 (GST-5440).
[141] *See, e.g.* Treggett FB Trust Claim at Waters 02561-63 (GST-5485).
[142] Treggett 2004 Pittsburgh Corning Ballot at GST-EST-0555991 (GST-5455).
[143] Committee Br. at 44.
[144] Tr. 1206:16-23 (Brickman) (describing methodical review of Designated Plaintiff materials); Tr. 2509:4-5 (Turlik).
[145] *See* Committee Br. 44 & n. 181 (misquoting Tr. 1206:22-1207:6).

> I methodically went through and sampled some of the voluminous material to satisfy myself that the factual record that had been supplied to me was accurate.
>
> And I satisfied myself that it was -- I found some quibbles in it in some places, but nothing that would affect my opinion. And so I did in fact satisfy myself that the underlying documents did support the statements, the factual statements in the April 12th memo.[146]

Mr. Turlik also described the basis for his testimony about the Designated Plaintiffs cases he examined:

> What I'm doing is presenting the facts as they occurred and then my opinions based on that.[147]
>
> . . .
>
> What I did was I went into the transcripts myself. So, for example, I tried to give a complete story when I was discussing cases. And I said yes, there was exposure to this product, and there was exposure to this thermal insulation. So I did attempt to give a full story.[148]

In any event, the Committee does not even contend that any of the facts documented in the memorandum were incorrect. The memorandum lists factual details in the Designated Plaintiffs' cases apparent from discovery responses, transcripts, and Trust submissions and about which there is no dispute.

In fact, the only case the Committee actually mentions in its brief is the *Blandford* case, a case for which Garlock was not allowed discovery or cross-examination and that the Committee continuously fails to describe forthrightly. The abusive practices of the firm that represented that plaintiff, Baron & Budd, were evident in the "Baron & Budd Script Memo" admitted at trial.[149] The Script Memo was an internal memorandum Baron & Budd used to instruct witnesses on how

[146] Tr. 1206:16-23 (Brickman).
[147] Tr. 2509:4-5 (Turlik).
[148] Tr. 2509:18-23 (Turlik).
[149] *See* Baron & Budd Script Memo (GST-1270); *see also* Brickman Demonstrative Slides at 12-15 (GST-8007) (reviewing contents of Baron & Budd Script Memo).

to testify, irrespective of their knowledge and facts.[150] The Script Memo targeted Garlock by name.

Blandford was ultimately a case that was not negotiated for value attributed to that case. It was resolved for "no new money," merely "left over" money Garlock had already promised to pay Baron & Budd in a multi-case settlement (Tr. 2474:3-8 (Turlik)). *Blandford* was brought to this Court's attention by the Committee who, in the Case Administration Hearing in the fall of 2010, erroneously represented that *Blandford* was a high-dollar verdict, when in fact, it had been reversed.[151]

While the Committee ignores the Designated Plaintiff cases (where Garlock was allowed discovery), it hails *Blandford* as an example where a plaintiff made disclosures of exposures to specific products in his interrogatory responses.[152] But minimal scrutiny of those responses shows the plaintiff did not disclose anything.

At trial, Mr. Turlik explained that the plaintiff's responses in *Blandford* used the qualifier "reason to believe" that made them inadmissible.[153] Moreover, the responses were not "disclosures," but merely a several page list of "every single product that was made."[154] The plaintiff never offered any evidence that the injured party was exposed to the products that Baron & Budd listed.[155] Other parts of the responses were similar. Baron & Budd listed all the asbestos suppliers in the region[156] and some 3,578 purported co-workers.[157] As shown at trial,

---

[150] Tr. 1164:6-1167:6 (Brickman) (describing contents of Baron & Budd Script memo); *see also* Tr. 1167:9-22 (Brickman) (explaining how Baron & Budd's practices deprive defendants of knowledge of plaintiffs' exposures).
[151] Reply Memorandum of the Official Committee of Asbestos Personal Injury Claimants in Support of Motion for Entry of a Scheduling Order for Plan Formulation Purposes (Docket No. 592) at 31.
[152] Committee Br. at 32.
[153] Tr. 2543:8-13 (Turlik) (document not admissible because it only indicates "reason to believe"); Tr. 2542:9-13 (Turlik) (interrogatory only indicates "reason to believe").
[154] Tr. 2543:5-6 (Turlik).
[155] When asked, "Did the exposure ID witness that was testifying for Mr. Blandford testify about exposure of his father to all of these products at trial?," Mr. Turlik responded, "No. Not even close." Tr. 2543:25-2544:3 (Turlik).
[156] Tr. 2480:21-2481:11 (Turlik).

Blandford was also a case where Garlock discovered—on remand—that Baron & Budd had failed to disclose Trust claims it filed months before trial.[158] Garlock has not had discovery of *Blandford* like it has the Designated Cases, but even based on this record, it is clear that *Blandford* does not provide an example of a plaintiff who meaningfully disclosed known exposures to asbestos products.

7. The Committee and FCR's contentions that Garlock's discovery was not broad enough, after consistently opposing discovery for years, should be swiftly rejected

A remarkable argument presented by both the Committee and the FCR is that Garlock's discovery of settled cases did not go far enough.[159] The Committee says that, "[e]ven if the picture Garlock paints of the Designated Cases were substantially true," those cases are not numerous enough to be representative of others.[160] The FCR concedes that Garlock proved plaintiffs' firms delayed claims to deny Garlock evidence, and even says that what Garlock proved in 40% of the Designated Plaintiffs cases was "serious, and should be taken seriously."[161] But he argues Garlock nevertheless should suffer an inflated estimation because he believes "[i]t would be inappropriate to reduce the recovery for all claimants because of the alleged bad acts of a few claimants."[162]

First, evidence of the Designated Plaintiffs' cases at trial showed the same basic concealment in every case. Every one of the Designated Plaintiffs' cases showed numerous non-disclosures and inconsistencies. Plaintiffs omitted exposures, on average, to nearly 19 (18.9) companies' products, including more than 13 (13.5) exposures to insulation companies'

---

[157] Tr. 2546:11 (Turlik).
[158] Tr. 2548:8-2549:17 (Turlik) (reviewing one of the undisclosed Trust claims to Celotex, filed a year before trial identifying details of Celotex exposure that were not identified by plaintiff in discovery).
[159] Committee Br. at 43-44; FCR Br. at 34.
[160] Committee Br. at 43.
[161] FCR Br. at 32-33.
[162] FCR Br. at 34.

products. None of the Designated Plaintiffs' cases showed a plaintiff who made full disclosure or even made a good faith attempt to.

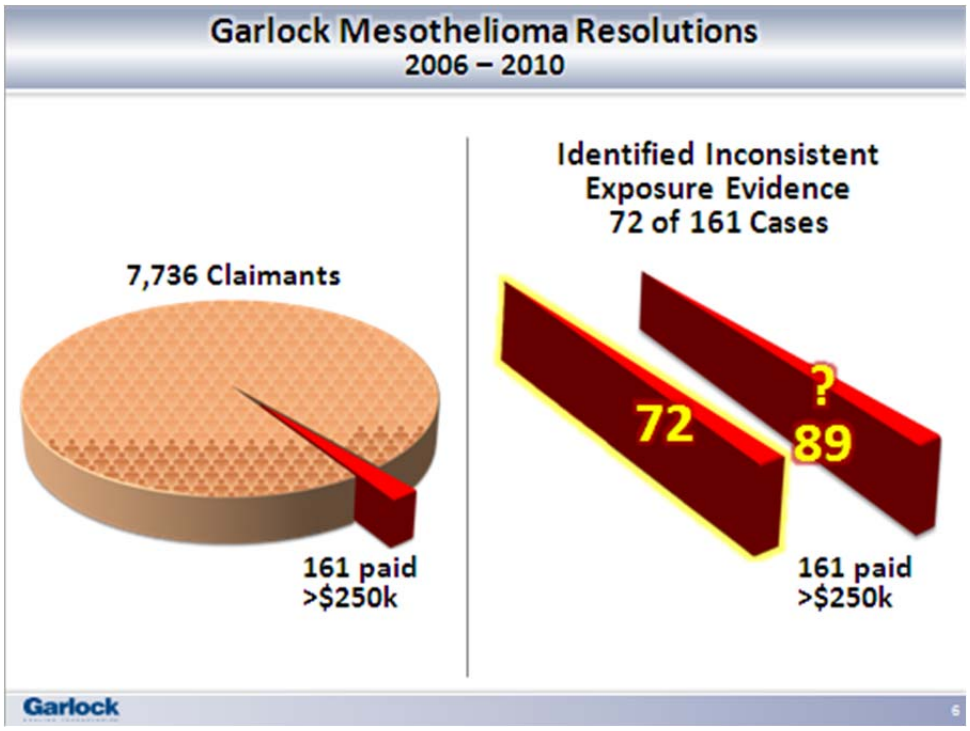
Second, in seeking discovery of the Designated Plaintiffs' cases, Garlock did not single out a narrow group of firms in a single jurisdiction. These cases came from five different tort-system firms in several jurisdictions including Los Angeles, Philadelphia, and New York City. These firms were emblematic of those that made high settlement demands in numerous Garlock cases each year. Deposition testimony from the bankruptcy-specialized David Law Firm indicated these same practices were not limited to firms representing the Designated Plaintiffs. Practices were similar for attorneys at Baron & Budd,[163] Shingler & Simon, and attorney Phil Harley.[164]

Third, there is no record evidence to suggest that these cases are *not* representative. Neither the Committee nor the FCR called a witness from any of the implicated firms to explain these cases. No witness testified at trial that these were out of the ordinary cases, unusual, or otherwise atypical. To the contrary, testimony from Debtors' witnesses at trial was that the Designated Plaintiff cases presented typical fact patterns in high-value cases that were litigated against Garlock.[165]

It also bears emphasis that Garlock presented evidence concerning RFA-1 Cases that was likewise uncontroverted. That list included 205 settled mesothelioma cases where material inconsistencies existed between discovery responses and submissions to Trusts and reorganized debtors. The RFA-1 Cases did not include all of the 161 cases that settled for more than

[163] Cooper Dep. at 33:10-12.
[164] Mr. Cooper testified that Mr. Harley was associated with the firm Paul, Handley & Harley, *see* Cooper Dep. at 53:25-54:2; although Mr. Harley appears to have been associated with the Kazan McClain law firm before his death in 2009. *See* http://www.kazanlaw.com/about-kazan-law/our-attorneys/philip-a-harley.
[165] Tr. 2252:14-25, 2257:21-2258:7, 2278:7-14 (Turlik); Tr. 1409:19-1410:13, 3065:6-23, 3089:20-3090:13 (Magee).

$250,000 from 2006 to 2010. Garlock discovered material inconsistencies in 72 of those settlements greater than $250,000 in that period. Given the extent of that proof, further review would likely reveal that many of the remaining 89 high value settlement also had material inconsistencies.



More than two years prior to the estimation trial, in March 2011, Garlock sought discovery of this very kind from a representative sample of approximately 500 settled cases.[166] The Committee successfully opposed that discovery arguing among other things that the discovery was irrelevant; would never show that "plaintiffs control this type of evidence;" and would provide no evidence that was not "cumulative of discovery they took in the tort system."[167] Now that Garlock has proven the Committee wrong, and shown how plaintiffs'

[166] *See* Motion of Debtors for Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos Claimants (Docket No. 1229); *see also* Amended Motion of Debtors for Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos Claimants and Law Firms (Docket No. 1270).

[167] Opposition of the Official Committee of Asbestos Personal Injury Claimants to Amended Motion of Debtors for an Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos

counsel in fact controlled and suppressed evidence in the cases in which the Debtors obtained discovery, the Committee and FCR complain, *inter alia*, that the Debtors proof is insufficient and that Garlock should have sought discovery of more cases. Garlock has consistently welcomed further discovery. As Mr. Magee stated at trial, "I'd like to know how many cases it really was. And I would welcome the opportunity for us to get discovery about how many cases it really was. Right now we're 15 for 15."[168] Given the expansive proof Garlock has already provided, no further proof is necessary. If, however, the Court concludes that more evidence is necessary to determine whether evidence suppression materially impacted Garlock's settlements, the Court should re-open the discovery record.

8. Plaintiff firms did not successfully "improve the case" against Garlock, apart from engaging in the practices uncovered during discovery in this matter

Finally, the Committee's brief argues that plaintiffs increased Garlock's trial risk not through the practices recounted above, but rather because they "developed their case against the company."[169] The Committee's brief ignores Garlock's successful trial results, even after the Bankruptcy Wave. Garlock always won more cases than it lost, and its win rate began climbing to historical success rates in the last half of the 2000s.[170] Among the successes, Garlock showed at trial, were the *Dougherty*, *Messenger*, *Davis*, and *Simpson*, cases where it compelled the production of Trust claims, which yielded positive outcomes.[171]

Claimants (Docket No. 1306) at 11, 21; 5/12/2011 Hr'g Tr. at 173 (Swett, T. stating "discovery will be cumulative of discovery that they took in the tort system.")

[168] Tr. 3135:16-19 (Magee).

[169] Committee Br. at 63 (citing Tr. 3793:10-3796:3 (Hanly)); *see also* Committee Br. at 13 (citing Tr. 3880:22-3881:6 (Peterson); ACC-824a at 17); Committee Br. at 46 (citing Tr. 3873:10-3874:18 (Peterson); Mahoney Dep. 50:12-53:18, Feb. 26, 2013).

[170] Tr. 2584:14-2585:22 (Magee) (describing increased trial success in period of 2006-2010, including *Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d 950, 955 (6th Cir. 2011)).

[171] Tr. 2580:14-25 (Magee); *see also* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 56-57 (GST-8011) (summarizing *Davis*, *Dougherty*, and *Messinger* cases); Debtors' Opening Br. at 25.

In support of its "improving the case" theory, the Committee cites the testimony of Dr. Peterson, who lacks the training or ability to offer an opinion as to whether a case had been "developed" against Garlock and how that impacts trial outcomes.[172] Although Dr. Peterson claims that "plaintiffs' lawyers began to develop their claims," he gives no details as to how they did so, in what ways the "claims" changed and how they impacted Garlock.[173] Previously, Dr. Peterson opined that the driving factor behind increases in settlement payments by defendants in the 2000s, was the fact of other defendants' bankruptcies in the Bankruptcy Wave, not a "developed" litigation case.[174]

The testimony from Mr. Hanly likewise fails to support this notion. Mr. Hanly's testimony describes a "focus" by plaintiffs' attorneys on gasket products, but he too fails to specify what this "focus" meant—in terms of actual differences in the case.[175] He did not identify these differences or explain how any differences impacted Garlock or others. In any event, Mr. Hanly was not in a position to observe any changes in plaintiffs' case against Garlock and others after the Bankruptcy Wave.[176] His asbestos practice ended when Turner & Newall, as part of the Federal Mogul bankruptcy, filed for bankruptcy protection. He has not been involved in any cases in any respect during the decade of asbestos claims that are at issue.[177]

By contrast, Garlock's witnesses have steadfastly testified that the plaintiffs' cases were materially unchanged between decades, with the exception that after the Bankruptcy Wave, plaintiffs ceased acknowledging exposures to products.[178] The plaintiff's case had always been

[172] Committee Br. at 13 (citing Tr. 3880:22-3881:6 (Peterson); ACC-824a at 17).
[173] *See* Tr. 3874:14-15 (Peterson).
[174] Tr. 4017:6-4018:16, 4019:15-4020:2, 4031:5-15, 4032:5-4032:25 (Peterson).
[175] Tr. 3793:10-3796:3 (Hanly).
[176] Tr. 3412:6-3413:3 (Hanly).
[177] *Id.*
[178] Tr. 2571:13-16 (Magee) ("[T]he ocean [of plaintiffs' alternative exposures] shrunk, even disappeared in some cases.").

"based on false inferences and junk science" and remained so in the 2000s.[179] Mr. Turlik testified that mesothelioma cases became a "more serious problem for Garlock in the 2000s," not because of a "focus" on the case by plaintiffs, but because its defense "was limited because of the lack of testimony of exposures."[180]

Mr. Glaspy similarly testified that plaintiff expert witnesses who appeared in the 1990s and in the 2000s did not present anything new.[181] Neither Dr. Longo, a serial witness for plaintiffs, nor any other industrial or medical witness called by plaintiffs altered the course of the cases through improved testimony. Mr. Glaspy said that plaintiffs' witnesses were used "interchangeably"—"[w]e've done that since the mid-'80s to the present."[182] Garlock met any tactics plaintiffs tried, such as the production of the Tyndall lighting video. In that instance, it demonstrated to courts it had "no scientific value" and they excluded it.[183] Deposition testimony from one of Garlock's outside lawyers, Mr. William Mahoney, that the Committee tries to cite likewise does not support this notion. His testimony was that "the core components of plaintiffs [sic] case against Garlock basically remained the same throughout the litigation."[184] He acknowledged that some plaintiff attorneys presented testimony that was more directed to Garlock's products than the past, but also noted that those difference began in the late 1990s, not in the 2000s.[185] He did not testify that the case improved or that Garlock's risk increased in any sense in the latter period due to "development" of the case. Rather, the thrust of his testimony

[179] Tr. 2565:6-2567:21 (Magee).
[180] Tr. 2411:17-22 (Turlik).
[181] Tr. 4542:22-4543:8 (Glaspy).
[182] Tr. 4543:4-5 (Glaspy).
[183] Tr. 4543:15-22 (Glaspy).
[184] 2/16/13 Mahoney Dep. 50:16-51:2.
[185] *Id.* at 51:3-20; 52:3-12.

was that the plaintiffs' case, at its "core," was the same between the two decades.[186] Only the evidence changed.

D. The Committee and FCR did not establish that Garlock's settlements "priced in" the impact of Trusts on Garlock's liability

The Committee and FCR failed to connect Garlock's settlements with its liability under law, for the reasons noted above. In addition, their experts' methodologies fail on their own terms. Drs. Peterson and Rabinovitz repeatedly acknowledged in previous work that defendants' settlements increased because of the departure of prominent defendants in the Bankruptcy Wave.[187] Logic dictates that, if settlements were proxies for the merits of claims (which they are not, as shown above), the re-entry of $30 billion in Trust funding would have to, in the words of Dr. Rabinovitz in 2007, place "considerable downward pressure on indemnity values" in the tort system.[188] That is because Garlock would, at the very least, receive credit against verdicts in joint and several liability jurisdictions for the massive payments made by Trusts, as Dr. Rabinovitz opined in the *ASARCO* case.[189]

To avoid this necessary consequence of their experts' prior work, the Committee and FCR now contend that any impact of Trusts was already reflected in Garlock's pre-petition settlements.[190] Both Drs. Peterson and Rabinovitz concede that settlement values have not decreased as a result of the influx of Trust payments, even though in Dr. Rabinovitz's case she acknowledges that "we [have] move[d] into an era in which the trusts will be making large

[186] *Id.* at 50:16-51:2.
[187] Tr. 4017:7-12 (Peterson); *see also* Tr. 4016:10-4018:16, 4019:15-4020:2, 4025:9-4026:12, 4031:5-4031:19 (Peterson); Tr. 4305:8-4309:20, 4312:17-4314:3 (Rabinovitz).
[188] Tr. 4313:5-15 (Rabinovitz).
[189] Tr. 4313:16-4314:3 (Rabinovitz).
[190] FCR Br. at 19 ("[A]ny impact from the payment of trust monies on solvent defendant indemnity payments would have been realized during that period."); *id.* at 36.

payments to a variety of claimants."[191] But the unrebutted evidence at trial showed that Trusts did not even begin paying significant amounts of money until late in 2007.[192] They started by paying backlogs of hundreds of thousands of claims from before the debtors' 2000-2001 bankruptcy petitions, as well as claims that had accumulated in intervening years.[193] As a result, "the late 2000s is the first time we get to the period when we are actually starting to see claimants being able to recover, potentially on a contemporaneous basis with the trust[s]," and, as Dr. Peterson previously testified in this Court, there is no reason to expect that the impact of Trusts would have been felt before Garlock's petition.[194]

Even when Trusts started paying recent claims, as discussed above, certain law firms attempted to prevent Trust payments from having an impact by delaying Trust claims and engaging in other similar strategies to conceal Trust claims, with the assistance of confidentiality and other provisions in TDP.[195] Thus, as Mr. Magee testified, "[T]here was a sealed door there, a closed curtain; no information available to us about who was making claims and who was being paid claims."[196]

In short, even if Garlock's settlements were a measure of what Garlock perceived its trial risk to be in the late 2000s—which they were not—there is no reason to expect that $30 billion in Trust payments were "priced into" those settlements. By using those "steroids era" settlements, Drs. Rabinovitz and Peterson massively overestimated the allowed amount of claims.

---

[191] Tr. 4210:10-11 (Rabiinovitz).
[192] Tr. 2801:3-12 (Bates).
[193] Tr. 2801:13-18 (Bates).
[194] Tr. 2801:19-22 (Bates); 10/15/10 Hr'g Tr. 414:25-419:7 (Peterson) ("Those are payments of old claims by new trusts. . . . Garlock is not going to get—probably isn't—even under their theory isn't going to get any credit for those payments because [Garlock has] already settled those claims.").
[195] *See, e.g.,* Tr. 2595:25-2597:3 (Magee) (describing analysis of exposure evidence omissions in 205 high-value cases).
[196] Tr. 3245:9-12 (Magee).

Drs. Rabinovitz and Peterson presented no analysis to the contrary, simply assuming that the impact of Trusts had been "priced in." Dr. Peterson, despite his prior testimony in this Court that Garlock had "already settled" the claims that Trusts were paying in the late 2000s, did not examine whether this was the case before his testimony to the contrary at the estimation trial.[197] Nor did he examine whether confidentiality and deferral provisions in TDP could have prevented the Trusts from having an impact.[198]

Dr. Rabinovitz testified that "[p]resumably, plaintiffs and defendants are taking [Trust claims] into account" when settling mesothelioma claims.[199] But her only source for this belief was a publication from an actuarial conference sponsored by Towers Watson.[200] Remarkably, the very publication she relied on noted that Trust transparency is an issue of major concern that has delayed any impact that Trusts otherwise would have had.[201] Dr. Rabinovitz skipped this part of the conference materials, even though it directly addressed the impact of Trusts on tort system defendants, and instead cited language reporting that certain insurance companies had recently increased their asbestos reserves.[202] Dr. Rabinovitz did not know whether this had anything to do with the impact of Trusts, speculating that the increase may be simply because insurance companies "tend to understate their reserves."[203] Dr. Rabinovitz nevertheless did not analyze or study whether Garlock's settlements did not decrease because of a lack of Trust transparency.[204] Nor did Dr. Rabinovitz analyze or study whether the Trusts were paying a backlog or were paying claims that Garlock was settling during the period immediately before the petition.[205]

[197] Tr. 4077:21-4078:24 (Peterson).
[198] Tr. 4078:25-4079:5 (Peterson).
[199] Tr. 4210:5-6 (Rabinovitz).
[200] Tr. 4210:12-19 (Rabinovitz); FCR-11.
[201] FCR-11, slides 28-31.
[202] Tr. 4210:20-22 (Rabinovitz)
[203] Tr. 4210:22-4210:24 (Rabinovitz).
[204] Tr. 4329:3-4329:7 (Rabinovitz).
[205] Tr. 4318:24-4320:11 (Rabinovitz).

E. Pre-petition expenditure forecasts do not support the reasonableness of Dr. Rabinovitz's estimate

The FCR argues that three of Garlock's own prepetition estimates support the reasonableness of Dr. Rabinovitz's $949 million mesothelioma-only estimate.[206] The FCR provides no analysis but simply compares numbers that happen to appear in each forecast with Dr. Rabinovitz's $949 million figure. None of the three lend support to Dr. Rabinovitz's work in this case, but just the opposite.[207]

The 2000 Tillinghast Forecast. The FCR first compares Dr. Rabinovitz's estimate with a forecast of Garlock's future asbestos expenditures undertaken by Tillinghast-Towers Perrin in December 2000.[208] The FCR argues that Dr. Rabinovitz's $949 million estimate compares favorably to Tillinghast's estimated range of $1.8 billion to $2.8 billion.

The Tillinghast range cited by the FCR, however, is not a fair gauge for comparison. The FCR admits that Tillinghast included projected expenditures for *all* disease types plus defense costs while Dr. Rabinovitz estimated only mesothelioma expenditures. The FCR fails to disclose that the vast majority of claims estimated by Tillinghast were not claims for mesothelioma. The FCR also fails to disclose that Tillinghast's estimated range is materially different for the additional reasons that it (1) is not discounted to net present value and (2) covers approximately ten years of expenditures (October 2000 to June 2010) not included in Dr. Rabinovitz's estimate.

Notably, the Tillinghast Forecast does provide the basis for the FCR to make a direct, apples-to-apples comparison to Dr. Rabinovitz's estimate. That is because one component of Tillinghast's forecast precisely matched what Dr. Rabinovitz estimated in this case - i.e., the

[206] FCR Br. at 20.
[207] In each of the three pre-petition estimates, EnPro or its expert was projecting expenditures, not allowed claims. As explained in detail in Debtors' Opening Brief, the testimony at trial, and sections I.A and I.B above, Garlock's expenditures did not reflect its liability for claims. Expenditures were far greater than liability. *See, e.g.,* Tr. 2705:6-9, 2735:8-14 (Bates).
[208] FCR Br. at 20.

present value of projected aggregate mesothelioma expenditures (excluding defense costs) beginning in June 2010. Section II of the Tillinghast Forecast projects Garlock's year-by-year mesothelioma expenditures, from late 2000 through 2049, under each scenario within Tillinghast's broad forecast.[209] The FCR chose instead to compare Dr. Rabinovitz's estimate of the present value of aggregate expenditures for mesothelioma claims only (excluding defense costs) beginning on June 5, 2010 to Tillinghast's projection of the *gross undiscounted* value of aggregate expenditures (*including* defense costs) for *all disease claims* beginning almost ten years earlier.

When a fair comparison is made, Tillinghast's work shows the unreliability of Dr. Rabinovitz's estimate and her methodology. At the *high end of its range*, Tillinghast estimates that the net present value of Garlock's aggregate future mesothelioma expenditures as of June 2010 is no more than $269 million.[210] This is approximately one fourth of Dr. Rabinovitz's base case estimate of $949 million. According to the FCR, Tillinghast used what the FCR and Committee call the "standard methodology" in making this forecast.[211]

EnPro's 2004 Internal Estimate. The FCR also compares Dr. Rabinovitz's work with EnPro's internal estimate of asbestos expenditures dated October 13, 2004 (the "Internal Estimate").[212] This comparison too proves no support for Dr. Rabinovitz.

A comparison with the Internal Estimate is particular inapt because it covers a time period that ended before the petition date.[213] The Internal Estimate also included *all* disease types

[209] FCR-49 (GST-EST-0128628 to 0128796).
[210] FCR-49 at 188 (GST-EST-0128681). **Exhibit A** to this brief shows Tillinghast's net present value of Garlock's projected mesothelioma expenditures as of June 2010. Tillinghast used a discount rate of 5% to calculate the high end of its projected range of expenditures. FCR-49 at 6 (GST-EST-0129568).
[211] FCR Br. at 21.
[212] FCR Br. at 20.
[213] The FCR states that the Internal Estimate projects liabilities "between 2004 and 2009 alone." FCR Br. at 20. To be more precise, the Internal Estimate projected expenditures for claims that were pending as of September 30, 2004 and claims that would be received by Garlock from October 1, 2004 to December 31, 2009, regardless of when such

and was not discounted to net present value. The estimate reported a range of expenditures from $249 million to $1.2 billion. EnPro recorded a financial statement liability at the low end of this range.

Like the Tillinghast Forecast, however, most of the projected expenditures at the high end of the range (approximately 65%) were not for mesothelioma claims. EnPro's management undertook the Internal Forecast prior to the demise of fraudulent, mass non-malignant screenings. But also like Tillinghast, the Internal Estimate includes a separate estimate of mesothelioma expenditures, which it projects to be within a range of approximately $108 million to $451 million (not discounted to present value).[214] EnPro's management recorded the $108 million, low end of the range. The Internal Estimate thus likewise provides no support for Dr. Rabinovitz's estimate.

The Magee Extrapolation. Finally, the FCR points to "EnPro's own internal forecast for 2009, prepared by its then General Counsel, Mr. Magee, project[ing] that Garlock's total payments to resolve asbestos claims through 2053 could total $1.27 billion, inclusive of defense costs."[215] In the only evidence regarding this alleged "forecast," Mr. Magee explained that it was not an estimate at all but simply an extrapolation he personally ran for his own analysis on work papers that, until inadvertently produced during discovery in the estimation case, never left his computer.[216] Mr. Magee explained that he took management's 10-year estimate and extrapolated payments forward to the year 2052.[217] He did so by reducing the amount of expenditures in each

---

claims were resolved and paid. Some of the claims filed within this time period were open as of the petition date and therefore are included in Dr. Rabinovitz's estimate. But undeniably the overlap between claims estimated in the Internal Estimate and those estimated by Dr. Rabinovitz is miniscule.

[214] FCR-37 at 2, 10 (GST-EST-0108365, GST-EST-0108373).

[215] FCR Br. at 20-21.

[216] Tr. 3155:8-3156:3 (Magee).

[217] Tr. 3156:4-12; 3157:3-25 (Magee).

successive year at a rate equal to the rate of decline in the annual projected incidence of mesothelioma.[218] He then increased the annual numbers by a 2.5% inflation rate.[219]

In any event, Mr. Magee's extrapolation does not support the reasonableness of Dr. Rabinovitz's $949 million mesothelioma estimate. It too includes all disease types and is not discounted to net present value.[220] Because Mr. Magee extrapolated gross annual payments without regard to disease, there is no break-out by disease.[221] When discounted to present value, however, the extrapolated expenditures even for all disease types are $481 million, or only about one half of the FCR's mesothelioma-only estimate.[222]

After wrongly concluding that Mr. Magee's extrapolation supports Dr. Rabinovitz's forecast, the FCR asserts that, when preparing his extrapolation, "Mr. Magee factored in the impact of future trust payments to claimants."[223] This too is untrue as Mr. Magee testified at trial that his extrapolation "absolutely [did] not" take the Trusts into account.[224]

F. Dr. Bates did not use Dr. Rabinovitz and Peterson's methodology before the petition

In a further attempt to bolster the credibility of Drs. Rabinovitz and Peterson, the FCR and Committee argue that Dr. Bates used their methodology before the petition. That is false. Dr. Bates testified that in his pre-petition expenditure forecasts for EnPro:

---

[218] *Id.*
[219] *Id.*
[220] FCR-38 at GST-EST-0122617-0122619.
[221] *Id.*
[222] **Exhibit B** to this brief shows the net present value of annual expenditures for all asbestos claims as of June 2010 set forth in the Magee Extrapolation based on a discount rate of 5%.
[223] FCR Br. at 21.
[224] When Mr. Guy asked whether Mr. Magee's extrapolation, which was FCR-38, factored in Trust payments, Mr. Magee testified that it did not. He explained that some of Dr. Bates' scenarios did take Trusts into account but that Mr. Magee and Mr. Grant did a top-down analysis that did not consider the Trusts. Tr. 3156:14-21 ("Q. This also took the trusts into account? A. Absolutely not. Again, it depends on what you mean by this. If you're talking about the ten year period and Dr. Bates' analysis, I believe it would have depended on which scenario you used. Our analysis, as I tried to say before, was a top down analysis looking at the law firms in total what did Mr. Grant and I agree could be the amount that we'd be able to decline our payments by.").

- He forecast future expenditures under several scenarios comprising a range of values that he concluded defined a set of equally likely outcomes;
- He took account of the potential impact that Trusts would have on Garlock's future settlements. The projected impact was most significant at the low end of his equally likely range and progressively decreased in projected outcomes from the low to high ends of the range;[225]
- To model the potential impact, he used data not only from Garlock's immediate past, but also from its history before the Bankruptcy Wave ("[W]e look at the recent history, and we look at the more distant history. We use both of those pieces to essentially create scenarios which show what we think is essentially the transition in the litigation environment into the future . . ");[226] and
- He did "analysis about how that history is representative about the period we're forecasting into," as well as the "degree of uncertainty about what that is."[227]

In contrast, Drs. Rabinovitz and Peterson simply used Garlock's most recent pre-petition history to arrive at point estimates, not ranges; did not account for the future impact of Trusts; did not determine that their calibration periods were representative of the future; and did not quantify the uncertainty in their forecasts.[228]

G. Dr. Rabinovitz's forecast is not "conservative"

The FCR attempts to portray Dr. Rabinovitz's projection as a conservative, compromise estimate. But for all of the reasons described above, it suffers from the same flaws as Dr. Peterson's: it relies on settlements that were driven by defense costs and not liability, it relies on

[225] Tr. 2830:13-16 (Bates).
[226] Tr. 2877:25-2878:9 (Bates).
[227] Tr. 2877:19-22 (Bates)
[228] *See* Debtors' Opening Br. at 117-35.

settlements that were inflated by non-disclosure of evidence, and it relies on settlements inflated (as both Drs. Rabinovitz and Peterson admit) by the Bankruptcy Wave.

In addition, as described in Debtors' Opening Brief, even overlooking these fundamental flaws, Dr. Rabinovitz has errors in her forecast that should reduce it to $300 million. The FCR's brief contains virtually no refutation of Dr. Bates's criticisms of how Dr. Rabinovitz applied her methodology. The points the FCR does make are refuted in Debtors' Opening Brief, with the exception of one. The FCR contends that Dr. Rabinovitz did not need to consider PIQ responses stating that claimants' claims had been dismissed because her "settlement rate" already takes that into account.[229]

This is not correct. Dr. Rabinovitz never testified to this. Rather, at trial, Mr. Guy posed this theory in his cross-examination of Dr. Gallardo-Garcia. Mr. Guy speculated that the dismissed cases contained in the PIQ data that Dr. Rabinovitz ignored are simply those predicted by Dr. Rabinovitz's dismissal rate of 40 percent, which she calculated using the Garrison database.

Dr. Gallardo-Garcia explained that is not correct. The PIQs revealed pre-petition dismissals that had not yet been recorded in the Garrison database but that had already occurred and thus should have entered into Dr. Rabinovitz's calibration period and her dismissal rate. Thus, Dr. Rabinovitz's dismissal rate should have been higher:

> MR. GUY: Right. So her model recognizes that there will be a dismissal of a large number, 40 percent or so, of the pending claims, right?
> DR. GALLARDO-GARCIA: Yeah, that's what she calculated.
> MR. GUY: So by saying, well, now in 2013 we have this new data and say, well, this one was actually dismissed. Her model, because it reflects an historical dismissal rate, already incorporates that, doesn't it?
> DR. GALLARDO-GARCIA: No, that's not correct.
> MR. GUY: All right.

[229] FCR Br. at 36

> DR. GALLARDO-GARCIA: In that case the problem is that she's basically double counting because there is a dismissal rate that is the actual dismissal rate based on the actual data that exists and then the number of dismissals that you will have in the – that existed before 2010. So this is not new data. We are talking about the data that was provided by the plaintiffs or their representatives through the PIQ, right? These cases were, as far as I understand, dismissed previously and they are just not reflected in the data.
>
> So now, if you use those cases to – if you update the data, understand what you are going to have is a correct dismissal rate rather than accounting for – the model accounting for those dismissals in the future.[230]

The FCR did not rebut Dr. Gallardo-Garcia's cogent explanation of Dr. Rabinovitz's error, and therefore provided no reason to disregard Dr. Bates's correction for "database errors"—or any of his other corrections.

The FCR's brief offers various additional reasons to regard Dr. Rabinovitz's forecast based on "steroids era" settlements inflated by defense costs and lack of access to evidence, as "conservative." None of these should carry any weight. Most puzzling, the FCR argues that Garlock "may well be required to pay more to resolve cases against it in the future as other companies exit from the tort system."[231] This argument admits one of Debtors' main points: that Garlock's settlements increased because of the Bankruptcy Wave. It also shows the fallacy of the FCR/Committee position. They truly believe that once companies depart for bankruptcy, other companies' settlements (and therefore liability) should increase ad infinitum, never decreasing to account for the substantial funds the bankrupts eventually place in Trusts.

The FCR also argues that:

- **The Nicholson-KPMG forecast may be wrong because it does not take into account the fact that "[p]eople now are living much longer and therefore are at greater risk of contracting the disease."[232]** If Dr. Rabinovitz believed this to be the case, she should

[230] Tr. 4749:25-4750:24 (Gallardo-Garcia).
[231] FCR Br. at 27.
[232] FCR Br. at 25.

have used a better incidence model that includes knowledge gained since the early 1990s, such as Dr. Bates's, which does account for this (as described more fully in Part II.B.5 below).

- **More than 79% of persons diagnosed with mesothelioma may sue Garlock.**[233] Given that Garlock was, in Dr. Peterson's words, "a rather minor producer of asbestos products," it is incredible that Garlock was being sued in this many mesothelioma cases before its petition.[234] The FCR's brief also fails to note that, as more and more people sued Garlock in the 2000s, Garlock did not pay in any greater number of cases.[235] An increasing propensity to sue is a sign of frivolous claiming, not a reason to regard Dr. Rabinovitz's forecast as conservative.[236]
- **Garlock may pay a higher percentage of claims, as it did earlier in the 2000s.**[237] Garlock had a higher settlement rate when it was being sued in fewer cases and paid less per claim. If Dr. Rabinovitz were to apply that settlement rate, she would need to predict fewer claims and a lower settlement average, which she does not.
- **The real discount rate may be lower.**[238] Given that Dr. Rabinovitz already applies a real discount rate of 1.0%,[239] this is difficult to believe.
- **Garlock may pay more "as a consequence of [Garlock's] decision to continue to manufacture and market asbestos-containing products until 2001."**[240] Among all the experts, only Dr. Bates studied or analyzed the contribution to future incidence that post-

[233] FCR Br. at 26.
[234] Tr. 4036:1-4039:20 (Peterson); Transcript of Proceedings, Nov. 13, 2003, *In re Western Asbestos Co.*, No. 02-46284 (GST-7202) at 719.
[235] Tr. 4767:10-4768:15 (Bates).
[236] The FCR admits that claimants who cannot demonstrate exposure to asbestos from Garlock's products should not be compensated by any section 524(g) Trust created in this case. FCR Br. at 6.
[237] FCR Br. at 26.
[238] FCR Br. at 26.
[239] Snow Amended Rebuttal Report at 26-27, 53-54 (GST-7239).
[240] FCR Br. at 27.

1979 exposures could make: "I went and looked at that to see whether or not it would have an impact. And it basically makes a very small difference given the exposure rates that are outlined by Mr. Henshaw. It's only a few dozen cases, additional cases over time. . . . [I]t doesn't materially change the conclusions that we have in there in the farthest into the future."[241]

H. The Committee and FCR's projections do not represent a fair settlement of this case

The FCR, putting aside the law and the facts, also argues that an estimate at Dr. Rabinovitz's figure would be a fair result for this bankruptcy case.[242] Two benchmarks show this is not correct.

First, the W.R. Grace settlement is instructive for this Court. W.R. Grace, which manufactured a ubiquitous, friable fireproofing product (among other products), was one of the most prominent companies in asbestos litigation at the time it filed for bankruptcy in 2001.[243] The debtor disputed liability and offered a merits-based approach, and the case settled before an estimation decision was rendered, for approximately one-fourth of Dr. Peterson's estimate in that case, leaving Grace's shareholders with billions of dollars in equity.[244] Dr. Peterson estimated that the present value of Grace's mesothelioma claims for 2010 and beyond (the claims comparable to those in this case) was $2.128 billion.[245] One-fourth of that—i.e., the amount Grace actually will pay for all those mesothelioma claims—is $532 million.

No-one could reasonably argue that Garlock, a gasket manufacturer, has liability that is in any way comparable to that of W.R. Grace, a friable products manufacturer. Yet the Committee

[241] Tr. 2997:23-2998:10 (Bates)
[242] FCR Br. at 23.
[243] Mark A. Peterson, W.R. Grace Projected Liabilities for Asbestos Personal Injury Claims (June 2007, rev. January 2009) (GST-6574) at 5-6 (Grace "has become the most visible and criticized asbestos defendant in the U.S.").
[244] Tr. 3093:6-8, 3093:21-3094:6, 3094:12-16 (Magee)
[245] See GST-7234.

and FCR want the Court to require Garlock to pay far more than W.R. Grace will to mesothelioma claimants—over $900 million in the case of the FCR, and over $1.2 billion in the case of the Committee. The approval by mesothelioma claimants of a $532 million settlement in W.R. Grace for mesothelioma claims from 2010 on shows how far removed from reality the Committee and FCR's estimates are in Garlock's case—including Dr. Rabinovitz's estimate.[246]

A second benchmark is an estimate Dr. Peterson prepared of Flexitallic's asbestos liability in 2002. The Committee likens Garlock to Flexitallic, also a gasket manufacturer, which along with other Federal Mogul companies (several of which made friable products) filed for bankruptcy protection in 2001. Dr. Peterson, applying the same methodology he applies here of extrapolating from Flexitallic's recent settlements, reached a total mesothelioma estimate of $465.8 million.[247] That figure included over 4,000 claims pending as of 2001, as well as claims between 2001 and Garlock's petition date of 2010,[248] and thus included thousands of claims that Garlock has already paid. Though not possible to calculate the post-2010 liability precisely from the document in the record, one would expect an estimate of $465 million in 2002 to imply something less than $300 million in post-2010 liability—precisely what Debtors have proposed to place in a Trust through their Plan.

Put another way, had Garlock filed for bankruptcy in 2001, as Flexitallic did, then Dr. Peterson and Dr. Rabinovitz's methodology of extrapolating from recent settlements would have led to estimates many times lower than what Drs. Rabinovitz and Peterson have put forward in this proceeding. This simply illustrates the fallacy of relying uncritically on settlements inflated by factors having nothing to do with Garlock's liability for claims. The Court should disregard

[246] *Id.*
[247] Memorandum, "Federal Mogul Asbestos Liabilities," at 15 (Oct. 25, 2002) (GST-0013).
[248] *Id.*

the projections of Drs. Rabinovitz and Peterson, which are not persuasive estimates of current and future allowed claims against Garlock.

II. The Committee and FCR misrepresent Dr. Bates's methodology

In their opening brief, Debtors fairly represented the methodology of Drs. Rabinovitz and Peterson by reference to their own testimony, as well as what Debtors showed both through cross-examination of those witnesses and through other witnesses. The Committee and FCR, by contrast, do not fairly portray Dr. Bates's merits-based methodology. Indeed, when the Committee sets out Dr. Bates's method, it does not even cite to Dr. Bates's direct testimony or the Committee's cross-examination of Dr. Bates. It cites to Dr. Peterson's account of that testimony, which (as described below) is full of errors.

The Court should not be led astray by the obfuscation the Committee and FCR attempt to introduce. The important fact is that only Dr. Bates estimated the facts that case law establishes are relevant: claimants' potential damages, Garlock's potential share of those damages if found liable, and claimants' likelihood of succeeding in carrying their burden of proof. *See, e.g.*, *In re Ralph Lauren Womenswear*, 197 B.R. at 775; *In re Adelphia Communications Corp.*, 368 B.R. at 279; *In re Farley*, 146 B.R. at 750-52; *In re Continental Airlines Corp.*, 64 B.R. at 860-61. As set out in Debtors' Opening Brief, Dr. Bates's estimates of those factors were not seriously rebutted, and Drs. Rabinovitz and Peterson offered no estimates of their own.

A. The Committee and FCR misrepresent the purpose and nature of Dr. Bates's estimate

The Committee and FCR, still unwilling to accept this Court's conclusion that Debtors' merits-based approach is a legitimate way to estimate claims in bankruptcy, *see* Estimation Order

¶ 19, argue once again that Dr. Bates applied a "novel" approach.[249] But not only did Dr. Bates estimate the facts called for by the estimation cases—Garlock's potential share of plaintiffs' damages discounted by plaintiffs' likelihood of success—in doing so, Dr. Bates applied the well-established disciplines of economics, Law and Economics, game theory, and econometrics.[250]

The Committee and FCR also contend that Dr. Bates used a methodology that was rejected by Judge Fitzgerald in the *Bondex* case.[251] But this is clearly incorrect. As is clear from the opinion Judge Fitzgerald entered in that case, the Bondex Debtors did not object to using their historical settlements to estimate their liability. To the contrary, they offered their settlement history as evidence of their aggregate liability, by quantifying and separating the portions of settlements attributable to liability concerns from portions driven by cost avoidance concerns. Unlike Debtors in this case, the Bondex Debtors did not estimate potential verdicts as prescribed by case law. Judge Fitzgerald held that she was forced to rely on Bondex's settlement history because Bondex refused to use jury verdicts to estimate liability:

> This estimation proceeding considers as factors causation and the likelihood of the numbers of claims that are valid. The issue is how to evaluate factors and, *given Debtors' reluctance to use only jury verdicts to value their liability, we are left with their settlement history*. This estimation must assess claims likely to be filed against Debtors in the future based on history and the amount those claims would likely be paid based on history.[252]

Judge Fitzgerald also complained at oral argument that Bondex did not offer evidence relevant to the merits of claims under state law, and she thus "ha[d] absolutely no information as to the merits—I have no information as to the merits."[253]

---

[249] Committee Br. at 55; FCR Br. at 22 n.69.
[250] Tr. 2705:23-2709:12, 4803:20-4804:23 (Bates)
[251] Committee Br. at 28-29; Committee Proposed Finding of Fact #13; FCR Br. at 24 n.74.
[252] Memorandum Opinion at 11 n.24, *In re Specialty Products Holding Corp.*, No. 10-11780 (Bankr. D. Del. May 20, 2013) (Docket No. 3852-1).
[253] Transcript of Hearing at 64-65, *In re Specialty Products Holding Corp.*, No. 10-11780 (Bankr. D. Del. March 4, 2013) (Docket No. 3609).

Unlike Bondex, Debtors have objected to the admission of settlements to prove Debtors' liability or the amount of claims. As a result, unlike Dr. Mullin in the Bondex case, Dr. Bates did not estimate Garlock's liability by parsing its settlements. Instead, Dr. Bates used the facts relevant to liability under applicable state law to estimate Garlock's liability, including verdicts (which entered into his calculation of total compensatory award and plaintiffs' likelihood of success) and claimants' identified exposures to other companies' asbestos-containing products (obtained in discovery in this case).[254] Most important, Dr. Bates applied the analysis called for by the estimation cases, using appropriate econometric techniques.

The Committee and FCR also accuse Dr. Bates of being unrealistic in estimating the value claims have assuming they are liquidated through trial.[255] But that is the precisely the analysis called for by the estimation cases, which state that the Court's task is to determine claimants' entitlements under substantive state law, including trials where there are triable issues of fact. *See* cases cited *supra*.

Dr. Bates, like everyone involved with this case, recognized that claims will likely be settled rather than tried, most likely through a Trust mechanism ("[O]bviously if you were to try and run trials, transaction cost[s] is the case as we see in the real world dominate that and become the overriding concern when the liability likelihoods are low").[256] His methodology was aimed at determining what would happen if the cases were tried, in order to determine the allowed amount of claims, and in doing so, he made the claimant-favorable assumption that any claimant alleging contact with Garlock products would get a trial.[257] He also provided the Court

[254] Verdicts must be used carefully because tried cases are not representative of the broader claim population—a point the Committee and FCR agreed with. Dr. Bates made appropriate adjustments to ensure that projected verdicts reflect unique circumstances of each claimants that influence verdict amounts, including age, jurisdiction, life status, number of other responsible defendants, payments from other defendants and applicable damages allocation rules.
[255] Committee Br. at 57, Committee Proposed Finding of Fact #140.
[256] Tr. 2911:25-2912:3 (Bates).
[257] Tr. 2912:4-11 (Bates).

with estimates of how much settlements could be, under a Plan or, counterfactually, in the tort system.[258] There was nothing unrealistic about Dr. Bates's testimony, which clearly explained what he was estimating and why.

The Committee argues that Debtors "had Dr. Bates abandon his prior estimation method and generate two new, different and much lower estimates."[259] But Dr. Bates testified that his previous estimates were of expenditures, not the merits of claims—very different from what he sought to measure in this case, allowed claims.[260] Dr. Bates's unwillingness to use settlements as a proxy for Garlock's liability stems not from any instruction from Debtors—there is no such instruction in Dr. Bates's charge—but rather from his conclusion, well supported by the Law and Economics literature and his empirical investigation in this case, that Garlock's settlements were not, in fact, a proxy for the merits of claims, which Dr. Bates was attempting to measure in this case.

The Committee refers to Dr. Bates's estimate as "a thought experiment in which all key issues are resolved in Garlock's favor."[261] But this is simply not true, as the Committee's inability to point to any such issue by name in its brief well illustrates. Dr. Bates assumed, contrary to law and fact, that:

- Any mesothelioma claimant identifying exposure to a Garlock product would be entitled to a trial and to put on his evidence of causation, despite cases to the contrary such as *Moeller*.
- Garlock would be assigned an equal share of liability with claimants' other identified exposures, even though the Committee's experts admitted that those

[258] Tr. 2705:16-22, 2833:14-25, 2837:8-25, 4801:7-4803:5 (Bates).
[259] Committee Br. at 55.
[260] Tr. 2776:3-2778:7, 2831:8-2832:13, 4755:20-4756:18 (Bates).
[261] Committee Br. at 57.

other exposures were far more significant than exposures from Garlock's products.

- Claimants would have an average likelihood of success of eight percent, even though the settlement data and Law and Economics model indicates an average win rate of less than one percent.

There is simply *no* assumption where Dr. Bates did not give claimants the benefit of the doubt.

The Committee alleges Dr. Bates admitted he "was not forecasting actual trials."[262] In fact, he said no such thing. In the portion of the transcript the Committee cites, Mr. Inselbuch argued that the handful of adverse verdicts against Garlock are inconsistent with Dr. Bates's projections of Garlock's average liability share in current and future cases. Dr. Bates explained that "the cases that go against Garlock are going to be a highly selected group, more highly selected than cases in general, because of the low likelihood, the very low likelihood that a case could actually prevail against Garlock in a fair trial. So that the only time that you're going to see a case being taken to trial against Garlock, is a case in which you're going to get a likelihood for a potentially very high amount, should the plaintiff prevail."[263] Discovery in this case showed that the typical claim bore no resemblance to claims that went to trial. Dr. Bates estimated thirty-six admitted exposures for typical claimants against Garlock, using discovery obtained in this case: 14 tort defendant exposures and 22 Trust exposures.[264] Moreover, discovery in this case showed that many of the adverse verdicts were affected by non-disclosure of evidence.[265] As a result, there was no reason to expect Dr. Bates's estimates, involving *all* current and future claims against Garlock, to match the handful of adverse verdicts. The adverse verdicts were

[262] Committee Br. at 65 (emphasis omitted).
[263] Tr. 2965:18-2966:4 (Bates).
[264] Tr. 2946:24-2947:11, 2950:5-2951:6 (Bates).
[265] Tr. 2969:11-16 (Bates).

"Garlock payments on a selected group of claimants" whereas Dr. Bates was estimating "what would be Garlock's expected liability extended across groups of claims, in trials that are fair trials . . . ."[266]

Both the Committee and FCR argue that creditors' higher priority means doubts should be resolved in their favor.[267] This is precisely why Debtors asked Dr. Bates to estimate the claims under claimant-favorable assumptions. As a result, Dr. Bates's estimate is a conservative, upper bound estimate. Creditors' higher priority does not justify disregarding the facts and law.

Finally, the Committee alleges Dr. Bates did not rely on the medical and scientific evidence that Debtors presented.[268] In fact, Dr. Bates testified that the scientific evidence Debtors presented corroborates his estimate of a low likelihood of plaintiff success against Garlock.[269] Debtors' science case should likewise give the Court comfort that Dr. Bates's estimates of relevant parameters—including the number of liable defendants and the likelihood of an average plaintiff succeeding against Garlock—are reasonable and conservative. That Dr. Bates assumed that claimants would get trials and be able to introduce their science evidence in order to produce an upper bound estimate is not a basis for legitimate criticism.

B. The Committee and FCR misrepresent how Dr. Bates calculated his estimate

Unable to refute the conservatism of Dr. Bates's estimate on its merits, the Committee resorts to misrepresenting how Dr. Bates performed his calculation.

[266] Tr. 2970:17-20 (Bates).
[267] Committee Br. at 19.
[268] Committee Proposed Finding of Fact #13.
[269] Tr. 2902:21-2903:7 (Bates).

1. Garlock's share of compensatory damages

The Committee states that Dr. Bates "counts as responsible co-defendants any company referenced in discovery materials such as interrogatory responses or depositions," citing Dr. Peterson's untrue testimony about Dr. Bates rather than Dr. Bates's own testimony.[270]

But Dr. Bates did not count a co-defendant or Trust merely because they were "referenced in discovery materials." Dr. Bates reached his estimate of 13 tort defendant exposures by counting the number of companies where the plaintiff, in sworn interrogatories or depositions, "would identify both their products, the types of products that they were exposed to, as well as either the brand or the company name. . . . [I]t's important they asserted contact with the product which they could identify."[271] A company was counted not merely because it was *mentioned*, but rather only where the claimant identified exposure to asbestos from a particular company's product—the very same theory that, according to the Committee and FCR, makes Garlock liable.

Dr. Bates reached his estimate of 22 reorganized entity exposures by counting a claimant's Trust claim (typically, 18 Trusts) or, where a Trust has not yet been established, filed a ballot (typically, 4 future Trusts). Dr. Bates's use of Trust claims and ballots in this way was reasonable because, as set forth above and in Debtors' Opening Brief, Trust claims and ballots contain certifications of exposure to the debtor's products.[272]

---

[270] Committee Br. at 60; *see also* Committee Br. at 56 (claiming Dr. Bates "derived this share by assuming that **any mention of another company** in the MCQ or elsewhere in discovery materials, trust claims, or bankruptcy balloting materials, was sufficient to establish liability and allocate to that company an equal share of liability in the trial") (emphasis added); Committee Proposed Finding of Fact #136.

[271] Tr. 2855:1-8 (Bates); see also Tr. 2796:7-11 (counting a tort defendant only when the plaintiff "can both identify, both the asbestos-containing product, as well as the manufacturer, at least knowing the brand of it, so that we can tie it to the company"); Tr. 2649:14-18, 2649:25-2650:1 (Gallardo-Garcia) (describing how reviewers "collected information about which products – to which products the claimant was alleging to be exposed to, what was the manufacturer of these products, what was the – any other characteristics about these products . . . [T]hey were to collect every single product to which a claimant alleged exposure.").

[272] *See, e.g.*, *supra* Part I.B.4.

Dr. Peterson's testimony, which the Committee cites for their proposed finding,[273] contains other errors. Dr. Peterson incorrectly states that Dr. Bates "looked at a couple of databases. He had – I think one of them of over 500 and one of them for 200 and some claims." In fact, Dr. Bates's estimate was based on over 1,000 claimant files.[274] Dr. Peterson also incorrectly states that Dr. Bates assumed "[i]f you filed a lawsuit against someone, even though that case is still pending and it hasn't been resolved, that company has liability," when Dr. Bates expressly testified that he did not count a company simply because it had been named in the plaintiff's lawsuit, but instead required an allegation of exposure in a discovery document.[275]

The Committee states that Dr. Bates used Rule 2019 statements in his calculation of the number of other liable parties.[276] This is incorrect, as Dr. Bates testified.[277]

The Committee also misstates how Dr. Bates accounted for differences in how different states apportion damages. The Committee states that "Dr. Bates also opined that Garlock would be responsible for just 1/36th of the few verdicts that would be rendered against it," and accuses Dr. Bates of treating all jurisdictions as several liability jurisdictions instead of taking into account joint and several liability in certain jurisdictions.[278] To the contrary, Dr. Bates testified clearly and unequivocally, at least five times at the trial, that he applied the liability allocation rules under applicable state law, and also performed sensitivity tests where he assumed all

[273] *See* Tr. 3910:6-3911:17 (Peterson).
[274] Tr. 2795:24-2796:4 (Bates).
[275] Tr. 2947:6-11 (Bates) ("I mean, it didn't have anything to do with the number of parties they sued. It had to do with the number of parties in their interrogatories or depositions. They identified both the fact that they were exposed to a product and whose product it was or the brand of that product.").
[276] Committee Br. at 60, Committee Proposed Finding of Fact #144.
[277] *See* Tr. 3027:17-19 (Bates) ("The 2019 statements we had not gotten in sufficient quantity and in the right method to be able to use them in that basis.").
[278] Committee Proposed Finding of Fact #11; *see also* Committee Proposed Finding of Fact #136, 141, Committee Br. at 59-60.

jurisdictions were joint and several, and another where he assumed all jurisdictions had several liability.[279]

Indeed, the Committee in support of its erroneous statement cites the portion of Dr. Bates's cross-examination where Mr. Inselbuch insinuated (but did not prove) that Dr. Bates treated all jurisdictions as several liability jurisdictions, but failed to cite Dr. Bates's flat denial of that insinuation:

> MR. INSELBUCH: This -- but you put up – yet on Friday you put up a graph that said, well there are some states with joint and several, and some states were several, and some states were hybrid. You didn't do any calculation with that, did you?
> DR. BATES: That's not true.[280]

2. Claimants' likelihood of succeeding in carrying their burden of proof

The Committee states that "Dr. Bates made the assumption that claimants would win no more than 8 percent (and probably less) of trials against Garlock, because that was the 'win rate' of claimants who went to verdict against Garlock in the 1990s, when insulation manufacturers were joined in the actions."[281] The Committee thus attempts to leave the impression that Dr. Bates is blindly using a verdict rate from the 1990s that is not characteristic of current claims against Garlock.

But this is a highly incomplete description. Dr. Bates testified "That's one part of it. The other part is the settlement liability test," referring to his use of Garlock's settlement history in the 2000s and Judge Posner's model to test the conservatism of his eight percent estimate.[282]

Dr. Bates testified repeatedly about that test and its parameters. The Committee fails to note anywhere in its brief or proposed findings of fact that Dr. Bates conducted this test, and

[279] Tr. 2779:8-15, 2789:2-5, 2802:14-2806:8, 2822:11-2823:10, 2932:3-2933:18, 2949:15-25 (Bates)
[280] Tr. 2937:3-7 (Bates); *see also* Tr. 2935:25-2937:2, 2937:8-18 (Bates).
[281] Committee Proposed Finding of Fact #11; *see also* Committee Proposed Finding of Fact #137, 148; Committee Br. at 63.
[282] Tr. 2956:23-24 (Bates).

conspicuously cuts off their citation before the second sentence quoted in the previous paragraph.[283] Dr. Bates referred to this test on at least eight other occasions in his testimony:

- "[W]e're going to use that trial history as the basis for creating benchmarks of what the liability would be. Then we're going to test that, the validity of those results against the claimant data" because "it's very clear . . . that the tried cases are not expected to be typical of the settled cases" so "we need to test that against – the veracity of that against the other data that we have."[284]
- "I used the settlement data . . . to come up with estimates of the liability likelihood, both within the – for all of the cases, parsing them in the way I did here. Each one of the cases, based on the claimant characteristics and the settlement amounts and my estimates of what the avoidable costs are and the potential verdict amounts, allows me to back into a calculation for each one of them, what the liability likelihood would have been for that case."[285]
- "This is using the actual settlements from the 2000s. . . . [W]hen you did that test and you calculate an average across all of those . . . the appropriate average amount would have been [. . .] closer to 1 percent across the entire population of potential claimants who would assert contact with Garlock product."[286]
- In response to Mr. Inselbuch's question "Am I not correct that Professor Priest takes the view that trial verdicts are neither random or [sic] representative," Dr. Bates answered, "I agree with that. Hence, part of my analysis of how you use the trial verdicts, and how you

[283] *See* Committee Proposed Finding of Fact #11 (citing Tr. 2956:10-23 and omitting line 24).
[284] Tr. 2807:15-2808:1 (Bates).
[285] Tr. 2811:11-23 (Bates).
[286] Tr. 2812:7-2813:5 (Bates).

have to test the trial verdicts to apply it to the cases more broadly. . . . You can't take the average outcome of them and just blindly apply it to the totals."[287]

- Once again, in response to a question from Mr. Inselbuch, Dr. Bates reiterated that the verdict history from the 1990s is "one part of it. The other part is the settlement liability test."[288]
- And once again in response to a question from Mr. Inselbuch, Dr. Bates emphasized that "It's very important that you test [the verdict history] against the veracity of the assumption you're making, against the other information that you have. And that's an integral part of this analysis."[289]

Dr. Bates testified about his test two more times in his rebuttal testimony.[290]

Dr. Bates's use of this settlement test showed that even in the 2000s, the vast majority of cases against Garlock had little likelihood of success. As Mr. Magee testified, Garlock had an illusion of trial risk only in carefully constructed "driver cases" where evidence was not fully disclosed.

The Committee and FCR offered *no evidence* to rebut Dr. Bates's test or its result. This is why the Committee does not mention it in its proposed findings of fact or its brief. It is fatal to the Committee's attack on Dr. Bates.

3. Total compensatory damages

The Committee claims that Dr. Bates "analyzes 367 jury verdicts found in news reports to see how they differed based on three variables—whether a plaintiff was alive or dead, the age

[287] Tr. 2920:20-2921:2 (Bates).
[288] Tr. 2956:23-24 (Bates).
[289] Tr. 2960:24-2961:9 (Bates).
[290] Tr. 4805:18-21, 4823:9-19 (Bates).

of the plaintiff, and the state the plaintiff lived in," again citing Dr. Peterson's testimony about Dr. Bates rather than Dr. Bates himself.[291]

In fact, Dr. Bates's analysis was far more extensive. The Committee omits to mention that he also estimated economic damages for each claimant using a model of economic damages similar to what would be used in litigation, taking into account all relevant facts about claimants from the PIQ data (such as occupation and age).[292] He then used the publicly available mesothelioma verdict data to estimate non-economic damages.[293] He confirmed the reliability of that data using 1200 publicly reported wrongful death verdicts.[294] He used a regression not to "see how they differed" (as the Committee puts it), but rather to correct for known selection bias in the observed verdicts.[295]

It is difficult to see how Dr. Bates' analysis could have been improved, and the Committee and FCR suggested none (apart from Dr. Peterson's spurious verdict trend, addressed in Debtors' Opening Brief). Indeed, Dr. Bates's method is completely consistent with (though more rigorous than) the method used in the estimation cases cited above in Part I.A.

4. Number of claimants alleging contact with Garlock products

The Committee states that "Dr. Bates . . . values at zero 1,755 of these pending claims based upon assumptions about who, in his view, has a viable claim based on his review of Mesothelioma Claim Questionnaire responses."[296]

But Dr. Bates valued these claims at zero not based on his "view," but based on the number of claimants who in PIQs alleged they had contact with Garlock products: a prerequisite

[291] Committee Proposed Finding of Fact #134.
[292] Tr. 2782:3-2783:11 (Bates).
[293] Tr. 2783:12-2784:2 (Bates).
[294] Tr. 4808:1-13 (Bates).
[295] Tr. 2786:18-2787:20 (Bates).
[296] Committee Proposed Finding of Fact #135.

to exposing Garlock to potential legal liability.[297] Even Dr. Peterson admitted he did not know of any claimant in Garlock's history who had won a verdict (or even been paid a settlement) without at a minimum alleging Garlock exposure.[298]

Once again, the Committee's citation is not to Dr. Bates's testimony, or their cross-examination of Dr. Bates, but to Dr. Peterson's confused understanding of what Dr. Bates did. In the portion of the transcript the Committee cites, Dr. Peterson incorrectly claims that Dr. Bates "eliminated 1,755 specific plaintiffs . . . based upon the Henshaw categories, basically. Henshaw categorized – Mr. Henshaw categorized the pending claims or submitted PIQs."[299] In fact, Mr. Henshaw had nothing to do with Dr. Bates's analysis of pending claims, which was based on Bates White's review of each PIQ submission and all attached documents, according to the exacting, multi-level quality control process about which Dr. Gallardo-Garcia testified, to determine which pending claimants identified direct or indirect contact with a Garlock product.[300] The Committee and FCR presented *no evidence* to challenge Dr. Bates's calculation of this figure.

The Committee continues to repeat its well-worn excuse that claimants who sued Garlock already cannot be expected to have evidence that Garlock caused their injury. The admission that large numbers of people were suing Garlock without having any evidence whatsoever implicating Garlock's products in the causation of their injury speaks volumes about the integrity of asbestos litigation.

But there is also no reason to expect that claimants who have not determined they had Garlock exposure already would ever be able to do so. Dr. Bates testified he would expect

[297] Tr. 2814:25-2815:5, 2816:13-2817:10 (Bates).
[298] Tr. 3978:15-3979:15 (Peterson).
[299] Tr. 3909:13-3910:1 (Peterson).
[300] Tr. 2816:12-2817:14, 2927:14-2928:12 (Bates).

individuals who had already sued Garlock—in most instances years before the petition—would know whether or not they had contact with a Garlock product.[301] Dr. Bates also tested the result of his PIQ analysis against "the historical data we've seen about the percentage of claims that could not and did not assert the contact with Garlock product," and determined that his estimate "makes sense" in light of historical levels of identification of Garlock's product.[302]

In any event, Dr. Bates determined what the effect would be to assume a random distribution of non-responses as the Committee urges, and that would have no more than a five or six percent effect on his estimate.[303]

5. Future incidence of mesothelioma

The FCR contends that Dr. Bates relied on an "idiopathic defense" to eliminate one-third of potential future claimants.[304] Likewise, the Committee contends that Dr. Bates eliminated "a third of predicted future mesothelioma claims based on the unsubstantiated and highly controversial assumption that, in those cases, the claimants' mesotheliomas would not be related to asbestos."[305] These criticisms reflect a fundamental misunderstanding of what incidence models are, what they predict, and how Dr. Bates used his incidence model in arriving at his future claims estimate in this case.

a. Nature of Nicholson and Nicholson-KPMG models

[301] Tr. 2940:25-2942:9, 2944:13-2945:24 (Bates).
[302] Tr. 2940:10-2940:14 (Bates).
[303] Tr. 2941:22-2942:1 (Bates). In a related point, the Committee argues that "Dr. Bates assumes that all exposure information in the case comes from the plaintiff when its own counsel have testified that they took steps to discover exposure information elsewhere." Committee Br. at 57-58; Committee Proposed Finding of Fact #140. This is not correct. Dr. Bates testified he assumed that "[w]hat is known or reasonably known by all the parties, both from the defense side as well as the plaintiffs, are under consideration by the parties who are adjudicating the liability." Tr. 2772:6-9 (Bates); *see also* Tr. 2912:13-15 (assuming "the information which is known **by both parties** is made available to the decision makers, the triers of those outcomes") (emphasis added); Tr. 4849:5-4849:14 (Bates) (same).
[304] FCR Br. at 24.
[305] Committee Br. at 56; Committee Proposed Finding of Fact #12, 138.

Unlike Drs. Peterson and Rabinovitz, Dr. Bates has been working on models of the incidence of mesothelioma in the United States for more than twenty years. In the early 1990s, he worked with Dr. Nicholson to update Dr. Nicholson's incidence model, an update now known as the Nicholson-KPMG model, upon which Dr. Rabinovitz relies in this case.[306]

The key fact about the Nicholson and Nicholson-KPMG models is that they only attempted to predict incidence arising from *occupational exposure* to asbestos, as both Drs. Rabinovitz and Peterson acknowledged at trial.[307] They do this by estimating the number of persons exposed occupationally to asbestos in industries and occupations in the United States, and then determining the risk of those exposures to estimate the incidence arising from those populations ("occupational incidence").[308]

Neither Nicholson nor Nicholson-KPMG attempts to predict total mesothelioma incidence in the United States. They explicitly disclaim it, both papers stating that the models do not even attempt to predict total *asbestos-related* mesothelioma incidence in the United States, much less all occupational incidence. Dr. Nicholson's paper noted that "a large number of asbestos-exposed individuals are not included in the estimates . . . . Important groups with identified risks include family contacts of asbestos-exposed workers, engine room personnel aboard US Navy ships in World War II, and individuals exposed environmentally to asbestos by virtue of residence or work near the use of asbestos."[309] Nicholson-KPMG likewise only modeled occupational exposures, not all exposures to asbestos.[310]

---

[306] Tr. 2716:4-2720:3 (Bates).
[307] Tr. 3895:8-3896:3 (Peterson); Tr. 4173:23-4174:12 (Rabinovitz); *see also* Nicholson, William J., et. al., *Occupational Exposure to Asbestos: Population at Risk and Projected Mortality – 1980-2030*, American Journal of Industrial Medicine 259, 282 (1982) ("Nicholson Paper") (GST-1311); KPMG Peat Marwick Policy Economics Group, "Estimation of Company Liability Personal Injury," Vol. 1 at 1 (1992) ("KPMG Paper") (GST-1298).
[308] *See* Nicholson Paper at 285; KPMG Paper at 1, 63-66.
[309] Nicholson Paper at 282.
[310] KPMG Paper at 1.

For this reason, it is inaccurate and misleading to compare Nicholson and Nicholson-KPMG to total nationwide incidence, as reflected in data such as the National Cancer Institute's SEER data, which estimate observed nationwide incidence. Dr. Rabinovitz recognized this in 2007 in the ASARCO case (a case where she was engaged by the debtor):

> Comparing the total SEER registry to either Nicholson forecast is misleading since SEER includes male and female mesothelioma cases. Since the Nicholson forecast is employment based, there were very few females in the labor force and occupation data Nicholson et al. were using, given the historical periods considered and the types of occupations and heavy industries where asbestos exposure predominantly occurred. Females comprise a very small part of the labor force in these industries, then and now. A comparison of the male SEER data to the Nicholson forecasts in the table below clearly shows that the Nicholson/KPMG forecast fits the SEER data much better than the original Nicholson forecast.[311]

Dr. Rabinovitz then compared both Nicholson and Nicholson-KPMG to the male incidence in SEER (a proxy for occupational incidence), to show that Nicholson-KPMG was a better forecast of occupational incidence.[312] She thus recognized that neither Nicholson nor Nicholson-KPMG attempted to predict nationwide mesothelioma incidence, and should not be compared to total SEER incidence.

b. Nature of Dr. Bates's incidence model

As one would expect given twenty more years of data and research, Dr. Bates's model improves upon Nicholson and the Nicholson-KPMG model that he developed. As Dr. Bates explained at trial, unlike Nicholson and Nicholson-KPMG, his model *does* predict future nationwide incidence of mesothelioma, as well as the components of that nationwide incidence.[313] He relies directly on the recent SEER data (which did not exist at the time of the

[311] Expert Rebuttal Report of Dr. Francine F. Rabinovitz, *In re ASARCO LLC* (June 27, 2007) (GST-6587) at 10.
[312] *Id.*
[313] Tr. 2725:18-2727:1 (Bates).

Nicholson or Nicholson-KPMG model thirty and twenty years ago, respectively) to calibrate his comprehensive model.[314]

Dr. Bates's model has two components: an asbestos-related curve and a non-asbestos-related (or "background" curve).[315] Dr. Bates's asbestos-related curve is a Nicholson-style model that has broader coverage than either Nicholson or Nicholson-KPMG because it includes *all* exposure to asbestos, not just exposure in particular occupations and industries. Dr. Bates testified, "[W]e have actually expanded the populations far beyond what Nicholson used. Because his population did not include the bystanders and the indirect. We've included those in the way this model is estimated and in our estimate."[316] The asbestos-related curve, like Nicholson's curve, peaks and then declines over time, as the population with meaningful asbestos exposure decreases.[317]

Dr. Bates's background curve, on the other hand, models the portion of incidence unrelated to asbestos exposure, which depends upon the aging of the population in general.[318] The existence of some background rate of mesothelioma unrelated to any kind of asbestos exposure is well-recognized in the epidemiological literature. Dr. Garabrant, the only epidemiologist called by any party at trial, testified, "There is a background rate of mesothelioma in all populations. And that means that mesothelioma occurs in all populations even in the absence of asbestos exposure, yes."[319]

But crucially, Dr. Bates's model does not "assume" any particular level of background incidence, as the Committee and FCR assert. Instead, as Dr. Bates testified, he created competing

---

[314] *Id.*
[315] *Id.*
[316] Tr. 2819:14-18 (Bates).
[317] Tr. 2726:5-2726:21 (Bates).
[318] Tr. 2725:22-2726:4 (Bates).
[319] Tr. 245:12-20 (Garabrant); *see also* Tr. 308:11-309:23 (Garabrant) (summarizing extensive epidemiological literature on this subject).

mathematical models of incidence: one based on his asbestos-related curve, and one based on background rates.[320] The mathematical model then finds the best combined fit to the total SEER data, to yield the best overall asbestos-related and background curves.[321] The model did not "assume" *any* background rate—if the data pointed toward no background level, that would have been the result.

To estimate Garlock's future liability, Dr. Bates needed to identify the number of future individuals who could allege contact with Garlock gaskets. These would be, by definition, asbestos-related cases. Individuals who develop mesothelioma without exposure to asbestos would not have contact with Garlock gaskets and thus could not allege they were in contact. Thus, Dr. Bates used the asbestos-related component of his incidence model to determine the number of individuals alleging contact with Garlock products.[322]

c. Dr. Bates made no "assumption" about background incidence, but rather reached a conclusion on the basis of his science that neither the Committee nor FCR challenged

As should be clear from this description of Dr. Bates's model, the Committee and FCR's charge that Dr. Bates eliminated claims on the basis of an "idiopathic defense" is simply false. Dr. Bates used his science to determine the best nationwide incidence curve and the asbestos-related and background components of such curve. The fact that his nationwide incidence model includes a background component unrelated to asbestos exposure is a *conclusion* of Dr. Bates's fitting of his model to the observed SEER data, not an "assumption."

Ultimately, the Committee and FCR's criticism amounts to an argument that Dr. Bates should have used *total nationwide incidence* instead of asbestos-related incidence to determine the number of future persons alleging contact with Garlock products. That would surely have led

[320] Tr. 2725:18-2727:1 (Bates)
[321] Tr. 2726:17-21 (Bates).
[322] Tr. 2815:15-2818:14 (Bates).

to a larger estimate, but it makes no sense. Incidence unrelated to asbestos could not lead to allegations of exposure to Garlock products.

Drs. Rabinovitz and Peterson surely understood this, despite their criticisms of Dr. Bates. They too used models that do not predict total nationwide incidence, but rather occupational incidence. That is, they too excluded background incidence from their estimates, and unlike Dr. Bates, did not even attempt to estimate that component. Indeed, their *asbestos-related* incidence models were less inclusive than Dr. Bates's asbestos-related curve, because they measured only occupational exposure and did not include all asbestos-exposed populations, unlike Dr. Bates's asbestos-related curve. Ironically, Drs. Rabinovitz and Peterson are more susceptible to the Committee and FCR's criticism than Dr. Bates is.

The Committee and FCR may be disappointed that Dr. Bates's science shows an asbestos-related incidence curve that is lower than the Nicholson and Nicholson-KPMG levels. But if the Committee and FCR (and Drs. Peterson and Rabinovitz) had reasons to doubt Dr. Bates's science, it was incumbent upon them to present that evidence at trial. Debtors gave them full opportunity to do so. Dr. Bates explained his model in full detail in 16 pages of his expert report, which Debtors encourage the Court to consult if it desires more information on this topic.[323] Dr. Bates also turned over the model itself in discovery. Yet the Committee and FCR did *nothing* to criticize his actual model—either in direct or cross-examination—apart from their false accusation that Dr. Bates made an "assumption" about an "idiopathic defense." The Court should ignore this criticism.

For all of the same reasons, the Court should ignore Dr. Rabinovitz and Dr. Peterson's argument that their estimates are "conservative" because Nicholson and Nicholson-KPMG may

[323] Report of Charles E. Bates (Feb. 15, 2013) (GST-0996) at 139-154. It demonstrates once again that Dr. Bates applied science, while the Committee and FCR's experts did not.

be too low. Neither Dr. Peterson nor Dr. Rabinovitz presented any science comparing Nicholson and Nicholson-KPMG to observed occupational incidence—the only proper comparator for those forecasts. As Debtors pointed out in their Opening Brief, Dr. Peterson's oft-repeated point about the Nicholson curve matching SEER data actually *disproves* the Nicholson model because, as Dr. Peterson acknowledges, Dr. Nicholson was not attempting to predict nationwide incidence.[324] And the last time Dr. Rabinovitz performed such a comparison, in the *ASARCO* case, she concluded (contrary to her testimony here) that (1) any comparison of the SEER data to the original Nicholson forecast was "misleading" because Nicholson did not project all mesothelioma incidence, and (2) the lower Nicholson-KPMG forecast was a more reliable prediction of occupational incidence than the Nicholson forecast ("[T]he Nicholson/KPMG forecast fits the SEER data much better than the original Nicholson forecast.").[325] Among the experts, only Dr. Bates applied actual updated science to the incidence issue, and he showed using current SEER data that asbestos-related incidence is lower than either Nicholson or the Nicholson-KPMG forecast.

III. The Committee and FCR failed to show that any claims would have merit against Garlock

Finally, at the end of the day, the Committee and FCR failed to prove that any of the claims have potential merit. *See In re Ralph Lauren Womenswear*, 197 B.R. at 775 (claims with no likelihood of success should be estimated at zero). This reinforces the conservatism of Dr. Bates's forecast and his estimation of the parameters relevant to the merits of claims, and absolutely refutes the notion that Garlock is potentially liable for every claim where a claimant alleges exposure to a Garlock product. *See Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d

[324] *See* Debtors' Opening Br. at 104-5.
[325] Expert Rebuttal Report of Dr. Francine F. Rabinovitz, *In re ASARCO LLC* (June 27, 2007) (GST-6587) at 10.

950, 955 (6th Cir. 2011) ("saying that exposure to Garlock gaskets was a substantial cause of [plaintiff]'s mesothelioma would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume."); *Betz v. Pneumo Abex, LLC*, 44 A.3d 27, 56-57 (Pa. 2012) (an expert cannot "indulge in a fiction that each and every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every 'direct-evidence' case.") (quoting *Gregg v. V-J Auto Parts Co.*, 943 A.2d 216, 226-27 (Pa. 2007)).

A. The Committee cannot refute that real world exposures to Garlock products are insignificant, regardless of fiber type, especially in the context of other likely exposures

Garlock's primary defense is "low dose," a defense that is not dependent on fiber type. The low-dose defense relies on solid science recognized by leading advocates for worker safety like Dr. Selikoff, who described gaskets and packing as posing "no health hazard in forms used in shipyard applications."[326] Dr. Selikoff's assessment has been confirmed by all reliable subsequent study.[327] The Committee cannot dispute the accuracy of real-world testing of typical gasket and packing use such as that described by Certified Industrial Hygienist Larry Liukonen. His data was collected for the Navy in order to make important safety assessments rather than fuel litigation.[328]

Instead, the Committee relies on litigation studies produced by Dr. Longo, who lacked industrial hygiene certification or experience, tested unusual activities in unusual ways,[329]

[326] Tr. 561:5-23 (Liukonen). *See* Debtors' Motion to Exclude or Strike Committee Medical Expert Witness Opinions (Docket No. 2981) (hereafter, "Debtors' Motion to Strike Medical Experts"), Appendix D, Weill Report References, 191. Selikoff (1978) Asbestos and Disease at 467.

[327] Tr. 850:15-851:23, 866:18-25 (Henshaw).

[328] Tr. 501:12-502:2, 510:19-511:3, 512:20-513:8 (Liukonen).

[329] For example, Dr. Longo tested gasket removal using an 11,000 rpm grinder with a carbon steel wheel. Committee experts with years of shipyard experience, Roger Beckett and James Shoemaker, both testified that such grinders

violated proper methodology, and produced studies riddled with errors.[330] The Committee misstates the record in an effort to defend these studies.[331] Even if his studies were scientifically reliable, they do not purport to answer the salient industrial hygiene question: Did exposure from Garlock's products amount to more than a bucket in the ocean of other exposures claimants encountered in their day-to-day work activities?[332]

First, all Dr. Longo attempted to do was put forth "worst case scenario" numbers, as demonstrated by his effort to normalize his results with the so-called Shell study, a handwritten sample sheet stating it "simulates worst case situation."[333] Committee expert Dr. Brodkin conceded that "it would not be scientifically valid to make conclusions about the levels of

---

were not used in their shipyards. Beckett Dep. at 105:16-23 (GST-15221); Tr. 1699:8-16 (Shoemaker). Dr. Longo also performed a fabrication experiment that was not designed to represent real world work. Mr. Shoemaker explained "you would occasionally see that done if a pipefitter had to make one gasket that he needed one gasket, onesies and twosies." Tr. 1669:21-24 (Shoemaker). Yet Dr. Longo hammered out four gaskets in the span of 22 minutes, using the edge of the flange to force the gasket apart. Tr. 1581:16-1582:12 (Longo). This is not how workers fabricated gaskets. Tr. 1702:15-1703:1 (Shoemaker).

[330] *See* Debtors' Motion to Exclude or Strike Committee Industrial Hygiene Expert Witness Opinions (Docket No. 2985) (hereafter, "Debtors' Motion to Strike Industrial Hygiene Experts"); Debtors' Brief in Support of Its Motion to Strike Committee Industrial Hygiene Witness Opinions (Docket No. 2986) (hereafter, "Debtors' Brief on Industrial Hygiene Experts"); Debtors' Reply to the Response and Opposition of the Official Committee of Asbestos Personal Injury Claimants to Debtors' Motion to Exclude or Strike Committee Industrial Hygiene Witness Opinions (Docket No. 3210) (hereafter, "Debtors' Reply on Industrial Hygiene Experts").

[331] The Committee claims Mr. Shoemaker "described exposure to asbestos fibers released during the removal and installation of gaskets on Navy ships at Norfolk Naval Shipyard." Committee Br. at 6. This is simply not true. The testimony of Mr. Shoemaker cited by the Committee says nothing about asbestos fiber release, and did not address exposures. Mr. Shoemaker is not an industrial hygienist and does not claim to have expertise regarding asbestos fiber release. Tr. 1716:17-1717:4 (Shoemaker). The Committee also misstates the evidence about common gasket fabrication methods, claiming "[i]n most cases" the worker would make gaskets one at a time by placing a sheet "against the flange to mark the bolt holes and flange openings," then cutting the sheet with punches and knives. Committee Br. at 7. As Mr. Shoemaker testified, "[t]he preferred way to do it was to make the gaskets in bulk" which Mr. Shoemaker said was done by the gasket room workers who made gaskets by the "thousands" and packaged them for pipefitters to "get them from the gasket room, which is mostly what people did." Tr. 1669:24-1670:12 (Shoemaker). Dr. Longo did not test this "preferred method" of secondary manufacturing.

[332] *See Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d 950, 955 (6th Cir. 2011) ("saying that exposure to Garlock gaskets was a substantial cause of [plaintiff]'s mesothelioma would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume."); *Betz v. Pneumo Abex, LLC*, 44 A.3d 27, 56-57 (Pa. 2012) (an expert cannot "indulge in a fiction that each and every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every 'direct-evidence' case.") (quoting *Gregg v. V-J Auto Parts Co.*, 943 A.2d 216, 226-27 (Pa. 2007)).

[333] Tr. 604:4-13, 610:21-613:10 (Liukonen).

exposure from typical workplace activities with gaskets based primarily on worst case scenario data."[334]

Second, as Dr. Anderson explained and case law holds, proper analysis of specific causation requires consideration of exposure concentration, frequency, and duration.[335] Neither Dr. Longo nor Mr. Templin attempted to opine on cumulative exposure. Thus, the Committee brief argues only that exposures "can indeed cause or contribute to mesothelioma."[336] The Committee does not address how often this happens or whether the alleged contribution meets the requirement of being a "substantial" cause. *See, e.g.*, *Moeller*, 660 F.3d 950. Thus, the Committee cannot and does not refute the testimony of Debtors' witness John Henshaw, CIH, that Garlock exposure is insignificant even in the highest Garlock product contact groups.

B. Chrysotile issues only enhance the already strong low-dose defenses

Low dose, of whatever fiber type, is why leading health advocates consider encapsulated products like gaskets and packing safe.[337] Given modern science, a separate and independent defense arises from the fact that virtually all Garlock products giving rise to claims were made from chrysotile. Committee expert Dr. Brody conceded that currently the "consensus of the medical community [is] that chrysotile-induced mesothelioma only occurs with very high exposures" such as occur in "mining situations."[338]

---

[334] Tr. 2015:3-10 (Brodkin).

[335] Tr. 4390:11-4391:1 (Anderson). *See* Debtors' Reply To Committee's Response And Opposition To Debtors' Motion To Exclude Or Strike Committee Medical Expert Witness Opinions (Docket No. 3204) (hereafter, "Debtors' Reply on Medical Experts") at 14-16.

[336] Committee Br. at 77.

[337] Tr. 621:21-622:4 (Liukonen).

[338] Tr. 1901:3-1902:18 (Brody) (admitting that in his deposition he agreed that was the consensus); Debtors' Motion to Strike Medical Experts, Appendix C, Brody Dep. at 149:12-150:4; Debtors' Motion to Strike Medical Experts, Appendix D, Sporn Rebuttal References, Churg (2005).

The steadily developing science about chrysotile was put in historical perspective by Dr. Weill. Public health suspicions about chrysotile's potential to cause mesothelioma arose from early Canadian studies showing increased risk in a few massively exposed chrysotile mining populations. Yet, as study progressed, it became clear that many highly exposed chrysotile populations where disease would have occurred if chrysotile fibers are a cause simply did not exhibit increased risk of disease. The leading example is South Africa, where all three commercial fiber types have long been mined extensively, where mesothelioma has been associated with both amosite and crocidolite mining, and where studies have reported the absence of mesothelioma in chrysotile populations.[339]

The same lack of mesothelioma has been documented in study after study in populations where an increased risk of mesothelioma would be expected if chrysotile fibers cause the disease.[340] Moreover, further study of populations initially reported as chrysotile cohorts almost always revealed confounding amphibole exposures.[341] Whatever uncertainty remains relates only to the issue of whether it is tremolite (or another contaminate in the chrysotile ore) that is the mesothelioma-causing agent in the few populations with extremely high exposures that have demonstrated increased incidence of mesothelioma.[342] Whatever may be the cause of mesothelioma in highly exposed chrysotile miners—the populations where some advocate that chrysotile fiber exposure is massive enough to cause mesothelioma—no *Daubert*-compliant science establishes that low-dose chrysotile exposure is a real world cause, and it is certainly not a legal cause in the context of massive exposures to amosite containing insulation products.

[339] Tr. 989:3-25 (Weill).
[340] Tr. 991:13-20, 993:2-13 (Weill).
[341] *See, e.g.,* Tr. 439:18-440:22 (Sporn). Other examples are contained in Dr. Sporn's rebuttal report that is part of the Rule 104 Record. Sporn Rebuttal Report (GST-15172) at 2, 13, 22-23.
[342] Tr. 1056:21-1057:6 (Weill). The Committee incorrectly characterizes Dr. Weill's testimony about a "debate" as relating to low-dose exposure. His testimony did not acknowledge a debate about low dose exposure, but related to the contamination issues in the high-exposure studies.

C. The Committee cites scientifically and legally insupportable material on chrysotile

The Committee's brief makes misleading use of studies dealing with potential environmental exposure to chrysotile. It cites Madkour 2009 for that study's report of low asbestos measurements in the range of 0.01 fibers per cc near an Egyptian cement plant.[343] The Committee fails to report that those were levels measured in 2003 and 2004, after "improvements in the technology of asbestos manufacturing."[344] For historical perspective, the Madkour authors cited an earlier study reporting extremely high fiber concentrations in the neighborhood of between 3.0 to 20.0 fibers per cc[345]—the pollution one would expect from manufacturing in a third world country. Moreover, the Committee's erroneous claim that Madkour is a chrysotile study relies upon a brief reference to current production and ignores the reality that asbestos factories in this neighborhood historically also used crocidolite and amosite.[346] Similarly, the Committee incorrectly claims Pan 2005 proves low-dose chrysotile causation. The authors of that study noted the study's many limitations and called for further

[343] Committee Br. at 76-77.
[344] Debtors' Motion to Strike Medical Experts, Appendix D, Weill Report References, 124. Madkour, et al, 2009 at 29, 34.
[345] *Id.* at 33.
[346] The Committee refers to Madkour's statement: "The Sigwart plant is an asbestos manufacturing plant using chrysotile asbestos." *Id.* at 27. Yet, the fact of amphibole use is documented in the medical literature. Debtors' Motion to Strike Medical Experts, Appendix D, Weill Report References, 78. Gaafar, 2007 P1-118; Tr. 2036:22-2039:1 (Brodkin).

research to test their theory.[347] Even Committee expert Dr. Brodkin has written that Pan 2005 cannot be used to determine chrysotile causation.[348]

The Committee also argues based on studies of massive exposure environments, irrelevant to end use of gaskets and packing.[349] It refers to studies among Canadian chrysotile miners. Yet mesothelioma has been linked only to those mines were the tremolite content is unusually high, and even in those mines the rate is surprisingly low—both strong indications that chrysotile is not the mesothelioma-causing agent.[350] Similarly, studies from the Balangero region of Italy involve exposures of hundreds of fiber years occurring in a mining locale where scientists have written that both tremolite and the "asbestiform mineral" Balangeroite are potential mesothelioma-causing agents.[351] The several Chinese studies by Yano and others all relate to the same two mesothelioma cases in a textile manufacturing plant as identified on a demonstrative slide Dr. Welch displayed at trial;[352] one has a suspiciously short latency and the other is peritoneal mesothelioma, a type of mesothelioma that is not associated with chrysotile

[347] Debtors' Motion to Strike Medical Experts, Appendix D, Welch Report References, Pan (2005). The Pan study was based on residence at date of diagnosis, which is largely irrelevant due to long latency between exposure and mesothelioma diagnosis. In addition, the authors report "incomplete occupational history on individual cases and control subjects," "the lack of a reliable and acceptable job-exposure matrix for asbestos to characterize the potential of individual occupational exposure," and "lack of complete lifetime residential history on individual cases and controls." Finally, the authors explain that their results are not even "asbestos-specific" but based on "ultramafic rock-specific GIS map" for sources of asbestos in California. Pan 2005 at 1023-24.

[348] In a letter to the editor, Dr. Brodkin described Pan 2005 as employing an "innovative method," and explained "two important limitations to the study design that bear comment, as they do not allow determination of a causal association between sources of naturally occurring asbestos (NOA) and mesothelioma." Debtors' Motion to Strike Medical Experts, Appendix D, Weill Report References, 31. Brodkin (2006) at 573. *See, e.g.*, Weill Expert Report (GST-15183) at 57. In his deposition in this case Dr. Brodkin explained the data also showed a significant association with occupational activity and that there was no way to distinguish the actual case. Debtors' Motion to Strike Medical Experts, Appendix C, Brodkin Dep. at 230:4-21.

[349] Tr. 994:2-20 (Weill).

[350] *See* Debtors' Brief in Support of Its Motion to Exclude or Strike Committee Medical Expert Witness Opinions (Docket No. 2982) (hereafter, "Debtors' Brief on Medical Experts") at 49-50.

[351] *See* Debtors' Brief on Medical Experts at 50-51.

[352] Welch Demonstrative PowerPoint Slides at 28 (ACC 3005).

exposure according to publications authored by Committee expert Dr. Brodkin.[353] Moreover, tremolite is the probable cause of the Yano cases, as demonstrated by a fiber burden study.[354] Similarly, the Committee cites to the study of a North Carolina textile plant by Dr. Welch's business partner, Dr. Dement. The claim that the plant used only chrysotile turns out to be based on a lack of review of available records that debunk that claim.[355] Additionally, a fiber burden study from the plant demonstrates commercial amphiboles in a worker from the plant who developed mesothelioma.[356]

Precedent holds that case reports "fail to test a causal hypothesis and therefore cannot support a causation opinion."[357] Nevertheless, the Committee cites Greenberg 1974 (reporting a single case of a person who sawed asbestos cement)[358] and Skammeritz 2011 (a reference without particulars about any specific case)[359] as establishing a causation benchmark at a few days of gasket exposure. Neither article has anything to do with low-dose exposure to gaskets or

[353] Tr. 2117:10-2118:2 (Welch); Tr. 2058:15-2059:2 (Brodkin).
[354] Weill Expert Report (GST-15183) at 60-61 (discussing Yano 2009).
[355] The Committee's brief misleadingly cites to air monitoring at the plant. Most of the documents related to amphibole products are from an early period when UNARCO, an amphibole product seller, operated the plant. Dr. Dement conceded that no air monitoring exists from that period. Tr. 2172:18-2173:10 (Welch). *See* Debtors' Motion to Strike Medical Experts, Appendix C, Dement Dep. at 32:8-11.
[356] Tr. 439:18-440:22 (Sporn).
[357] *Dellinger v. Pfizer, Inc.*, 2006 U.S. Dist. LEXIS 96355, 32-35 (W.D.N.C. July 19, 2006). *See* Debtors' Brief on Medical Experts at § IV(C)(2).
[358] Greenberg 1974 is an article about the British Mesothelioma Register. Debtors' Motion to Strike Medical Experts, Appendix D, Weill Rebuttal References, Greenberg (1974) Mesothelioma Register 1967-68 (hereafter, "Greenberg 1974"). The only information on that case's exposure which Dr. Welch relies upon for her benchmark is "1 day" of "sawing up asbestos cement sheets to construct two sheds." Tr. 2185:9-19 (Welch). Dr. Welch admitted that the cement sheet in question probably contained amphiboles. Tr. 2185:9-14 (Welch).
[359] Debtors' Motion to Strike Medical Experts, Appendix D, Garabrant Rebuttal References, 105. Skammeritz (2011) (hereafter, "Skammeritz 2011"). This is a report on 122 cases at a Denmark clinic, which appeared in a journal apparently once published by the National Iranian Oil Company Health Organization. Internet Research fails to find evidence that it is a journal that is currently published. The authors specifically state that the study "is small and based on retrospectively collected information of clinical data **not designed for scientific purposes**." Skammeritz 2011 at 234 (emphasis added). The basis of the Committee's citation to it is that the data on exposure showed a range "from a few days to over 40 years." Id. at 228-29. The Committee cites this data even though the authors admit it was not collected for scientific purposes, and it discloses nothing about the nature of the exposure.

even to exclusively chrysotile products. Similarly, the Committee cites a case report with a questionable diagnosis, Everatt 2007,[360] as supposed support for low-dose chrysotile creating an increased risk of disease. The authors made no claim that this case report detected a statistically significant increased rate of mesothelioma, which (it is important to remember) occurs in the absence of asbestos exposure.[361] As Dr. Garabrant explained, case reports raise hypotheses, they do not establish causation. [362]

The Committee also argues that liability must exist because of the views of public health agencies. As Dr. Anderson explained, public health agencies employ risk analysis based on precautionary principles.[363] Case law explains these materials are not the basis of liability because, like case reports, they do not "test a causal hypothesis and therefore cannot support a causation opinion."[364] Similarly, the Committee cites Garlock's Material Safety Data Sheets. Federal law required companies to produce an MSDS listing risks public health agencies have

[360] Debtors' Motion to Strike Medical Experts, Appendix D, Weill Report References, 73. Everatt (2007) Occupational Asbestos Exposure Among Respiratory Cancer Patients in Lithuania (hereafter, "Everatt 2007"). Dr. Welch described this as a case series Tr. 2125:18-22 (Welch). But both she and the Committee brief focused on only one case with occupational exposure to chrysotile. In fact, "[t]he person with occupational chrysotile exposure had fewer chrysotile fibers in his lung than both non-occupationally exposed subjects and occupationally exposed workers." Weill Expert Report (GST-15183) at 55 (citing Everatt 2007 at 461, Table V). An issue arises because the diagnosis was based on cytology. Diagnosis by cytology is "fraught with hazards." Weill Expert Report (GST-15183) at 55 (citing Roggli 2004).

[361] The rate of spontaneous or idiopathic mesothelioma can be as high as 20-40% in men and 50% in women. Tr. 309:14-21 (Garabrant).

[362] Tr. 271:5-272:8 (Garabrant).

[363] *Indus. Union Dept., AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 656 (1980) (OSHA "is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection.").

[364] *Dellinger v. Pfizer, Inc.*, 2006 U.S. Dist. LEXIS 96355, 29-31 (W.D.N.C. July 19, 2006), citing *Glastetter v. Novartis Pharm. Corp.*, 252 F.3d 986, 989-90 (8th Cir. 2001) and other cases. *See, e.g., Rider v. Sandoz Pharms. Corp.*, 295 F.3d 1194, 1201 (11th Cir 2002) (regulatory agency "analysis involves a much lower standard than that which is demanded by a court of law. A regulatory agency such as the FDA may choose to err on the side of caution. Courts, however, are required by the *Daubert* trilogy to engage in objective review of evidence to determine whether it has sufficient scientific basis to be considered reliable.").

determined may exist with respect to the product's ingredients.[365] Courts reject attempts to base liability on a company's MSDS.[366] If this were not the law, manufactures of play sand, the MSDS for which reads "may cause cancer,"[367] would be liable for the cancer of every cancer patient who remembers visiting a sandbox.

Finally, the Committee seeks to bolster its claims with inadmissible evidence about positions taken by Kelly Moore when it sued a supplier of chrysotile for indemnity, evidence that would be inadmissible against Garlock in any trial.[368] In short, none of the materials the Committee brief cites to support its low-dose chrysotile arguments are proper bases for causation opinions.

D. The Committee's flawed attacks on Debtors' medical witnesses' credentials

In the *Daubert* briefing, the Committee sought to avoid the lack of evidence that passes muster by trying to engage in a debate about who presented the more qualified experts. Its post-hearing brief contains similar distracting claims. Objectively, the Committee's "better-credentialed" claim is insupportable. Debtors' physician witnesses who appeared at trial hold tenured positions at world-famous universities. Collectively, they are experts in each of the several medical specialties most relevant to the science issues, have vast clinical experience with mesothelioma, and have authored major publications on the topics about which they testified.

---

[365] The Federal Hazard Communication Standard sets out the MSDS requirements. 29 CFR § 1910.1200(h)(1) (2006).

[366] *Schelske v. Creative Nail Design, Inc.*, 280 Mont. 476, 487, 933 P.2d 799, 805 (1997) ("the MSDS do not establish that any particular product is in a defective condition and is unreasonably dangerous"); *Coastal Tankships*, 87 S.W.3d 591, 618 (Tex. App.–Houston [1st Dist.], 2002, pet. denied) (Brister, J., concurring) (MSDS "provides no information about relative risk, required exposure level, or time of onset. This is not enough to prove causation.").

[367] Tr. 949:3-950:20 (Henshaw).

[368] Even if both Garlock and Kelly-Moore were trial defendants in the same case (the one example to which the Committee cites), the Kelly-Moore statement would only come into evidence as an admission against Kelly-Moore. Garlock would be entitled to a limiting instruction that it does not constitute evidence against Garlock.

On the other hand, the Committee presents testimony from physicians who are admitted advocates, do not now hold tenured positions at academic institutions, and are both board certified in Occupational and Preventive Medicine, a field that employs the precautionary principle in determining causation. It is telling that when Dr. Brodkin and Dr. Welch lack evidence that meets scientific or legal requirements they fall back on the assertion that they are using the same analytic approach they would use in making decisions as occupational physicians.[369] The Federal Judicial Center Reference Manual on Scientific Evidence cautions against accepting causality assessments based on clinical decision-making.

> Although physicians use epidemiological studies in their decision making, "they are accustomed to using *any* reliable data to assess causality, no matter what their source" because they must make care decisions even in the face of uncertainty. This is in contrast to the courts which require a higher standard than clinicians or regulators, and wherein causation cannot just be "possible" but where "a 'preponderance of evidence' establishes that an injury was caused by an alleged exposure."[370]

The caution not to use treatment decision strategies applies even more strongly when Occupational and Preventive Medicine is the specialty of the expert. As was established at trial, and admitted by Dr. Brodkin, preventive medicine errs on the side of overprotection.[371] A physician in that specialty starts with a bias built-in from their training to employ protective assumptions that are different than the legal requirements to establish tort causation.[372]

1. The Committee's fallacious attack that debtors did not provide testimony from a board-certified occupational physician and that Dr. Garabrant was not well-qualified to opine on epidemiology of mesothelioma

---

[369] Dr. Welch explained that case reports suffice for her own opinions, based on her perspective as an occupational and preventive medicine physician. Tr. 2186:9-15 (Welch). Dr. Brodkin testified to using occupational medicine methodology: "There are three major methods that I use in my practice and that physicians in Occupational and Environmental Medicine would typically use in addressing the question of causation . . . ." Tr. 1935:13-16 (Brodkin).

[370] Reference Manual on Scientific Evidence, 3d ed. (2011) at 714.

[371] Tr. 2016:23-2017:10 (Brodkin).

[372] See discussion accompanying notes 363 and 364 *supra*.

The Committee incorrectly claims "none of [Debtors' experts] has a specialty in occupational medicine."[373] Debtors' expert David Garabrant, M.D. holds board certification in Occupational Medicine (in addition to his board certification in Internal Medicine and Preventive Medicine) and is a fellow of the American College of Preventive Medicine and the American College of Occupational and Environmental Medicine.[374] He has served on the editorial board of the Journal of Occupational Medicine and on the Board of Directors of both the Michigan Occupational Medical Association, and the Western Occupational Medical Association.[375] Dr. Garabrant "was recruited to the University of Michigan in 1988 to head the occupational medicine program"; he later became the Director of the University's Center for Occupational Health and Safety Engineering and ran the occupational and environmental epidemiology program.[376] For more than 20 years from 1989-2011, he served as an attending physician in the Occupational Medicine Outpatient Clinic at the University of Michigan Medical Center.[377] As he explained at trial, throughout his career Dr. Garabrant treated patients in his occupational medicine practice, and he routinely testified on behalf of patients seeking compensation.[378] The Committee's claim that none of the experts presented by Debtors has a specialty in occupational medicine is thus completely counterfactual.

In addition to failing to recognize Dr. Garabrant's medical specialty, the Committee attacks his credentials to opine on epidemiology. It is hard to conceive of a better-credentialed expert to opine on proper epidemiological methodology than a Professor Emeritus of

[373] Committee Br. at 72. They go on to state: "In marked contrast to the qualifications of Drs. Garabrant, Sporn and Weill, the Committee's medical experts, Drs. C. Andrew Brodkin and Laura Welch, are both board-certified in occupational medicine." *Id.* at 73.
[374] Tr. 236:5-11 (Garabrant).
[375] Garabrant CV (GST-15156A).
[376] Tr. 238:4-18 (Garabrant).
[377] Garabrant CV (GST-15156A).
[378] Tr. 241:7-19 (Garabrant).

Epidemiology at the University of Michigan. Although both Dr. Welch and Dr. Brodkin have held teaching positions, neither earned Professor Emeritus status and neither held a professorship in epidemiology.

Nor are the Committee's challenges to Dr. Garabrant's epidemiology research valid. He has headed important epidemiology research for government, industry, and union entities. The Committee quibbles that only four of his many peer-reviewed articles contain the word "asbestos" in the title.[379] Even this quibble about the number of articles is misdirected. As Dr. Garabrant explained, several of his papers deal with asbestos even though the word is not in the title (for example, the cohort mortality study of UAW Ford workers that the Union and Ford jointly requested him to perform).[380] But the pertinent issue is that he *has* published in the peer-reviewed literature on the issue about which he testified, low-dose chrysotile product exposure.[381] The attack on these views are particularly cynical given that Dr. Garabrant's opinions are consistent with what Dr. Brody admitted is the consensus of scientific opinion.[382]

2. Debtors also provided the court the perspective of other specialties highly relevant to the issues: pulmonology and pathology

Dr. Welch admitted Occupational and Preventive Medicine is a general field specialty that does not zero in on any specific disease or organs. [383] Thus, it is not surprising that Dr. Welch has little real world experience with mesothelioma. Her one clinical experience was an occasion when she suspected mesothelioma in an insulator and referred the suspected case to

[379] Committee Br. at 72.
[380] Tr. 314:3-12 (Garabrant).
[381] Tr. 300:20-301:2 (Garabrant).
[382] Note 338 *supra*.
[383] Debtors' Motion to Strike Medical Experts, Appendix C, Welch Dep. at 25:11-20. She explained that to practice Occupational Medicine requires learning "about all diseases that affect adults." *Id.*

another doctor who made a mesothelioma diagnosis.[384] On the other hand, Debtors presented specialists in pulmonary disease and pulmonary pathology.

a. Pulmonology, the specialty of Dr. Weill, is a more specific specialty for the disease here at issue

Dr. Welch admitted she does not represent to the Court that she has the level of training and expertise in pulmonary medicine that would be held by a board certified pulmonologist like Dr. Weill, who is the Director of the Center for Advanced Lung Disease at Stanford University Medical Center.[385] Instead of the in-depth knowledge possessed by a lung specialist, an Occupational Physician knows about lung disease only as part of a "horizontal knowledge of a wide number of conditions."[386] Thus, generalists like Dr. Welch rightly defer to specialists.

In fact, Dr. Weill has authored a leading reference for occupational physicians like Dr. Brodkin and Dr. Welch. He wrote the chapter on asbestos disease for *Hunter's Disease of Occupations*, 2011.[387] Dr. Weill's qualifications to inform occupational physicians on the nuances of pulmonary diseases like mesothelioma results from years of study and an active clinical practice that includes patient contact almost every day.[388] As a specialist in the field, Dr. Weill has personally treated mesothelioma patients. His writings also include a chapter in the recently-publish Oxford University Press text tiled *Asbestos and Its Diseases*.[389]

b. Pathology, the specialty of Dr. Sporn, is a specialty that provides an important perspective

The discipline of pathology provides valuable insights into asbestos disease. Accordingly, Debtors also provided expert testimony from a pathologist who is an expert in pulmonary

[384] Debtors' Motion to Strike Medical Experts, Appendix C, Welch Dep. at 15:15-16:15.
[385] *Id.* at 25:23-26:3; Tr. 961:5-12 (Weill).
[386] Debtors' Motion to Strike Medical Experts, Appendix C, Welch Dep. at 25:6-10.
[387] Tr. 963:6-9 (Weill).
[388] Tr. 961:15-25 (Weill).
[389] Tr. 963:1-5, 10-12 (Weill).

pathology. Dr. Sporn's interest in asbestos disease began when, as a board-certified internal medicine physician, he treated persons with mesothelioma early in his career. That led him to pursue an additional specialty in pathology. He has become head of Thoracic Pathology for Duke University Medical Center. In that role he has had responsibility for diagnosing thousands of cases of mesothelioma. Denigration of his credentials based on the truth is insupportable. Accordingly, the Committee resorts to untruth in an effort to attack him.

c. The Committee falsely claims Dr. Sporn has not published on asbestos issues

In the course of the Committee's argument that its experts are "far better credentialed in the area of the [sic] asbestos and in the causation of asbestos diseases generally and mesothelioma specifically," they assert "Dr. Sporn has not published on these subjects at all."[390] Actually, Dr. Sporn is one of the foremost pathologists currently publishing in this area.[391] The second edition of Dr. Sporn's textbook *Pathology of Asbestos Associated Diseases* contained detailed discussion of causation of all asbestos-associated diseases.[392] Dr. Sporn authored three chapters of this textbook, including the chapter entitled "Mesothelioma."[393] The third edition of this widely-respected text is in press.[394]

The core of Dr. Sporn's opinions relate to what lung fiber burden analyses demonstrate about mesothelioma causation. This is a subject upon which he has published in the peer-reviewed literature.[395] In fact, the graphic that he displayed to the court came directly from his article entitled "Malignant mesothelioma and occupational exposure to asbestos: a

[390] Committee Br. at 77.
[391] Tr. 411:20-412:4 (Sporn).
[392] Tr. 412:5-11 (Sporn).
[393] Tr. 412:13-15 (Sporn).
[394] Tr. 412:16-21 (Sporn).
[395] Tr. 411:20-412:4 (Sporn)

clinicopathological correlation of 1445 cases."[396] Dr. Sporn also testified about the mineralogy of asbestos, a subject upon which he authored a chapter in the 2011 text *Malignant Mesothelioma*.[397] He has other peer-reviewed articles, book chapters, and invited reviews to his credit on the subjects about which he testified.[398] As with the other claims about their witnesses' superiority, their claims related to Dr. Sporn are not objectively accurate.

In summary, the attacks on Debtors' witnesses cannot detract from the weakness of the claims against Garlock. The "consensus of the medical community [is] that chrysotile-induced mesothelioma only occurs with very high exposures" such as occur in "mining situations." [399] No claimants are asserting Garlock exposure even approaching mining exposures. In fact, Garlock's strongest defense is independent of fiber type and relies on the lack of significant exposure from the kinds of end use typically experienced by claimants. Real world end use of Garlock products has been tested repeatedly, and reliable testing has always confirmed there is no health hazard. The low-dose defense is particularly powerful when put into the context of the other exposures of likely users. As it was for Mr. Moeller, saying Garlock gasket exposure "was a substantial cause of his mesothelioma would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume." *Moeller v. Garlock Sealing Techs.*, LLC, 660 F.3d 950, 955 (6th Cir. 2011). The Committee's brief fails to come to grips with the reality of these defenses.

Conclusion

"Our adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process." *United States v. Shaffer Equip. Co.*, 11 F.3d 450,

[396] Tr. 429:9-23 (Sporn).
[397] Tr. 412:22-413:5 (Sporn).
[398] Tr. 411:20-412:4 (Sporn); see also Sporn CV (GST-12998).
[399] Tr. 1901:3-1902:18 (Brody).

457 (4th Cir. 1993). Honoring the "foundation of truth" requires rejecting the Committee and FCR's invitation to turn estimation into an exercise in determining how much an innocent party could be coerced into paying because of the cost of proving its defenses. Seeking the "foundation of truth" requires rejecting the position of adversaries who treat the legal system as an "industry" or who cynically manipulate relevant evidence in the appalling manner that led to the high Garlock settlements that the Committee and FCR rely upon to build their estimations. Seeking the "truth" requires realistic assessment of the facts of Garlock's true legal liability based on law and evidence.

The evidence at trial proved that Garlock's true responsibility for mesothelioma claims is not revealed in its settlements. Garlock's settlements were driven by the trial cost avoidance and, in some cases, trial risk distorted by fraud and gamesmanship that frustrated Garlock's access to evidence necessary for its defenses. The Court thus should decline to accept the estimates offered by the Committee and FCR based on settlements.

In contrast, Debtors have offered an estimate based on applicable tort law and evidence necessary to estimate Garlock's share of legal responsibility for mesothelioma claims. The evidence proved that, in reaching such estimate, Debtors' experts properly applied established and reliable scientific principles of economics, Law and Economics, game theory, and econometrics.

Moreover, the Court can be confident that Debtors' estimation lays a sound foundation for further proceedings in this case. In this circuit, any plan of reorganization confirmed must ensure that Garlock's assumption that it will resolve claims with access to all information that mesothelioma claimants or their lawyers have regarding claimants' asbestos exposures is not an "imaginary world." As the Fourth Circuit has made clear,

> Each lawyer [. . .] must surely advocate his client's position vigorously, but only if it is truth which the client seeks to advance. [Our adversary] system can provide no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end. It is without note, therefore, that we recognize that the lawyer's duties to [. . .] advocate vigorously are trumped ultimately by a duty to guard against the corruption that justice will be dispensed on an act of deceit.

Id. at 458.

Ultimately, a ruling by this court that mesothelioma claims must be resolved, whether by settlement or litigation, based on full access to relevant evidence will enhance the successful formulation and confirmation of a plan of reorganization.

For the reasons set forth in their post-trial brief and this response, Debtors request that the Court estimate that the aggregate amount of allowed mesothelioma claims, pending and future, is no more than $125 million.

This 26th day of November, 2013.

Respectfully submitted,

/s/ Garland S. Cassada
Garland S. Cassada
N.C. Bar No. 12352
Jonathan C. Krisko
N.C. Bar No. 28625
Richard C. Worf, Jr.
N.C. Bar No. 37143

ROBINSON BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000

gcassada@rbh.com
jkrisko@rbh.com
rworf@rbh.com

Special Corporate and Litigation Counsel to the Debtors Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company

Cary Schachter
Raymond P. Harris, Jr.

SCHACHTER HARRIS, LLP
220 Canal Centre
400 E Las Colinas Blvd.
Irving, TX 75039
Telephone: (214) 999-5700
Facsimile: (214) 999-5747

cschachter@schachterharris.com
rharris@schachterharris.com

Special Litigation Counsel to the Debtors Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company

EXHIBIT A

EXHIBIT A

Tillinghast Forecast

The values in this chart are extracted from Section II of the Tillinghast Forecast,[1] which provides a projection of Garlock's year-by-year mesothelioma expenditures. In Scenario 4, which represented the high end of the Tillinghast Forecast range, Tillinghast estimated that Garlock's annual mesothelioma expenditures from June 2010 to 2049 would be as set forth below.

YEAR	AMOUNT	YEAR	AMOUNT
2010	$ 6,934,304.00	2030	$ 11,572,689.00
2011	$ 17,624,217.00	2031	$ 12,255,478.00
2012	$ 18,654,914.00	2032	$ 12,978,551.00
2013	$ 19,766,225.00	2033	$ 13,774,285.00
2014	$ 20,911,373.00	2034	$ 14,555,198.00
2015	$ 17,365,557.00	2035	$ 9,440,462.00
2016	$ 18,389,914.00	2038	$ 9,997,449.00
2017	$ 19,474,910.00	2037	$ 10,587,298.00
2018	$ 20,623,939.00	2038	$ 11,211,949.00
2019	$ 21,840,751.00	2039	$ 11,873,454.00
2020	$ 17,091,701.00	2040	$ 3,619,312.00
2021	$ 18,100,143.00	2041	$ 3,832,851.00
2022	$ 19,168,052.00	2042	$ 4,058,989.00
2023	$ 20,298,967.00	2043	$ 4,298,470.00
2024	$ 21,496,608.00	2044	$ 4,552,079.00
2025	$ 15,106,179.00	2045	$ 83,115.00
2026	$ 15,997,443.00	2046	$ 88,018.00
2027	$ 16,941,292.00	2047	$ 93,212.00
2028	$ 17,940,828.00	2048	$ 98,711.00
2029	$ 18,999,337.00	2049	$ 104,535.00
		Total	$ 501,802,759.00
		Total Discounted to Net Present Value as of June 2010	**$ 268,536,712.00**

[1] FCR-49 (GST-EST-0128628 to 0128796).

EXHIBIT B

EXHIBIT B

Magee Extrapolation

Annual expenditures set forth in the Magee Extrapolation for all disease claims from June 2010 to 2053 are set forth below.

YEAR	AMOUNT	YEAR	AMOUNT
2010	$ 39,000,000.00	2032	$ 6,000,000.00
2011	$ 65,100,000.00	2033	$ 5,000,000.00
2012	$ 62,000,000.00	2034	$ 5,000,000.00
2013	$ 58,000,000.00	2035	$ 5,000,000.00
2014	$ 54,000,000.00	2036	$ 5,000,000.00
2015	$ 49,500,000.00	2037	$ 5,000,000.00
2016	$ 44,000,000.00	2038	$ 4,000,000.00
2017	$ 39,500,000.00	2039	$ 4,000,000.00
2018	$ 33,000,000.00	2040	$ 4,000,000.00
2019	$ 29,000,000.00	2041	$ 3,000,000.00
2020	$ 26,000,000.00	2042	$ 3,000,000.00
2021	$ 23,000,000.00	2043	$ 2,500,000.00
2022	$ 20,000,000.00	2044	$ 2,000,000.00
2023	$ 18,000,000.00	2045	$ 1,500,000.00
2024	$ 16,000,000.00	2046	$ 1,000,000.00
2025	$ 13,000,000.00	2047	$ 900,000.00
2026	$ 10,000,000.00	2048	$ 700,000.00
2027	$ 9,000,000.00	2049	$ 600,000.00
2028	$ 8,000,000.00	2050	$ 500,000.00
2029	$ 8,000,000.00	2051	$ 400,000.00
2030	$ 7,000,000.00	2052	$ 400,000.00
2031	$ 7,000,000.00	2053	$ 300,000.00
		Total	$ 697,900,000.00
		Total Discounted to Present Value as of June 2010	**$ 480,732,000.00**